

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

November 20, 2003

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, November 20, 2003, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Ronald Marnell, Chair; Kerry Coulter, Vice-Chair; James Barfield; Bud Hentzen; Ray Warren; Bill Johnson; Morris K. Dunlap; Elizabeth Bishop; M.S. Mitchell; Ed Sunquist; David Wells and Frank Garofalo. Bob Hernandez and John W. McKay Jr. were not present. Staff members present were: Dale Miller, Current Plans Supervisor; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jamsheed Mehta, Transportation Supervisor; Dave Barber, Land Use Supervisor and Rose Simmering, Recording Secretary.

1. Approval of MAPC meeting minutes November 6, 2003.

No action was taken.

2. Approval of MAPC 2004 Yearly Calendar.

DUNLAP moved, **JOHNSON** seconded the motion, and it carried (10-0).

3-1. SUB2003-64 – Revised One-Step Final Plat –BAREFOOT BAY ESTATES ADDITION, located east of Ridge, on the south side of 29th Street North.

- A. This plat will be subject to approval of the associated zone change and any related conditions of such a change. Prior to this plat being scheduled for City Council, the associated zone change will need to be approved.
- B. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted. Fees in lieu of assessment regarding water connections are required.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- E. The platlor's text needs to be corrected with reference to Lots 4, 5 & 6 and Reserve A.
- F. A site benchmark is needed.
- G. The regulatory floodway line should be determined.
- H. Minimum building pad required elevations and Bench Mark elevations shall also be referenced in Mean Sea Level.
- I. Since the subdivision is partially in a FEMA -regulated floodplain, the floodway certificate needs added.
- J. The plat proposes three access openings along 29th St. North. **Three openings for residential lots are approved by the Subdivision Committee. The openings shall be at least 300 feet apart.**
- K. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- L. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the appropriate governing body, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- M. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- N. The Applicant has platted a 20-ft building setback which represents an adjustment of the Zoning Code standard of 25 feet for the SF-5, Single-Family District. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the

approval of the Planning Commission.

- O. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations for Lot 1, Block A.
- P. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- Q. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- R. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- S. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- T. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- X. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Y. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

NEIL STRAHL Planning staff noted that the plat is associated with a zone change. Last week the Subdivision Committee reviewed this as a residential plat. Access control is specified on the plat. City Law Department asked me to inform the MAPC that the rezoning has not yet been approved for this property, and plat approval would be contingent upon that zoning approval. The zone change was originally approved last March, and that ended up being denied by WCC and then appealed to District Court. A settlement has been reached between the Homeowners Association and the property owner. The court has remanded the case back to City Council for consideration on December 2. This plat would be subject to that zoning approval.

MARNELL So, what you are saying is we can approve this plat as it is, but it is subject to City Council approving the zoning?

STRAHL That is correct.

GAROFALO There for a while on these plats we were getting a recommendation from the staff, and this week I don't see any.

MILLER We switched that because that turned out to be a deterrent to Planning staff in that there are so many recommendations coming from other departments and divisions that we don't have any control over - the stuff from Engineering, Public Works, Health Department etc. So rather than having a blanket statement from the Planning Department, we decided to pull that so that it doesn't confuse somebody. We may or may not agree with what somebody else is asking for, but since we provide the meeting venue we felt like it is more important to not have that on there. If you have a specific question, planning staff will answer based on whatever the planning department would feel.

BISHOP In other words, it is being remanded to the WCC for decision, not back to the MAPC.

STRAHL I was told that was not likely.

BISHOP Then there aren't likely to be - based on what has been decided so far - many major changes that would have an impact on the plat?

STRAHL That is correct.

BISHOP If there were could the plat come back to us?

STRAHL I believe so, yes.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, COULTER seconded the motion, and it carried (12-0).

3-2. **SUB2003-124– One-Step Final Plat –CY WIGGANS ADDITION, located on the west side of Hillside and north of Kellogg.**

- A. This plat will be subject to approval of the associated zone change and any related conditions of such a change. Prior to this plat being considered by MAPC, the zone change will need to be approved.
- B. Municipal services are available to serve the site.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. The plat denotes complete access control along both perimeter streets with an ingress/egress easement that provides access to this site from the adjacent property to the north. A copy of the ingress/egress easement shall be provided.
- E. **Traffic Engineering** needs to comment on the need for additional right-of-way along Hillside. The Access Management Regulations requires a 60-ft half -street right-of-way width along urban arterials. **The 50-ft right-of-way width along Hillside is approved.**
- F. The Applicant has platted a 5ft building setback along Waterman which represents an adjustment of the Zoning Code standard of a 15 feet street side setback for the GO, General Office District. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- P. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov) . This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, WELLS seconded the motion, and it carried (12-0).

3-3. **SUB2003-125– One-Step Final Plat –GRANDVIEW TERRACE SECOND ADDITION, located east of Hillside, on the north side of Central.**

- A. Municipal services are available to serve the site. **City Engineering** needs to comment on the need for guarantees or easements.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. **Traffic Engineering** needs to comment on the access controls. The plat proposes one access opening along Central. **The opening shall be in alignment with Clifton.**
- E. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings.
- F. **Traffic Engineering** needs to comment on the need for additional street right-of-way along Central. The Access Management Regulations requires a 60-ft half-street right-of-way width along urban arterials. The plat denotes a 10-ft sidewalk and utility easement and a 50-ft street right-of-way. **The street right-of-way along Central is approved. A 10-ft sidewalk and utility easement is also needed along Vassar.**
- G. A Protective Overlay Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved P-O and its special conditions for development on this property.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- P. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov) . This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

WELLS moved, **GAROFALO** seconded the motion, and it carried (10-0).

3-4. **SUB2003-126– One-Step Final Plat – CASA DE LA FAMILIA ADDITION, located north of 29th Street North, west of Broadway.**

- A. Municipal services are available to serve the site.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.

- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved. An off-site drainage agreement is needed.**
- D. **Traffic Engineering** needs to comment on the access controls. The plat proposes one access opening along Arkansas. **One opening is permitted along the south line of the property. Cross-lot access shall be permitted for the benefit of the abutting property to the south, if and when said lot is developed for non-residential use. A restrictive covenant or agreement shall be provided addressing this condition.**
- E. A 40-ft street right-of-way is proposed along Arkansas which is classified as an arterial. The Access Management Regulations requires a 60-ft half-street right-of-way width along urban arterials. **The 40-ft half-street right-of-way is approved by the Subdivision Committee.**
- F. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- P. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

WELLS moved, **GAROFALO** seconded the motion, and it carried (10-0).

3-5. SUB2003-127– One-Step Final Plat – HARVEST RIDGE COMMERCIAL ADDITION, located on the northwest corner of K-42 and Maize Road.

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. **City Environmental Health** needs to comment on the potential use of temporary on-site facilities prior to the availability of public water and sewer. **A memorandum shall be obtained specifying approval of the proposed temporary facilities.**
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.

- D. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- E. Since drainage will be directed onto K42, a letter shall be provided from KDOT indicating their agreement to accept such drainage.
- F. **Traffic Engineering** needs to comment on the need for any improvements to perimeter streets. **A petition for left turn lanes is needed.**
- G. **Traffic Engineering** needs to comment on the access controls. The plat proposes two access openings along Maize Road from Maize Drive, including one temporary opening. **The south opening shall be closed upon development.**
- H. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA - NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- I. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- J. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- K. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- S. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- T. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov) . This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

WELLS moved, **GAROFALO** seconded the motion, and it carried (10-0).

3-6. **DED2003-26 – Dedication of a Utility Easement, for property located north of Maple, west of I-235.**

OWNER/APPLICANT: Millenia Homes, C/O Gregg Tennant, 8922 Meadowpark Ct., Wichita, KS 67205

AGENT/SURVEYOR: Sandalwood Surveying, C/O Jim Bishop, P.O. Box 75053, Wichita, KS 67275

LEGAL DESCRIPTION: A two-foot utility easement described as follows:

The south two feet of the north ten feet of the east half of Lot 11, except the south four feet thereof, Block D, Westbreeze Second Addition.

PURPOSE OF DEDICATION:

This Dedication is a requirement of a Lot Split (Case No. SUB 2003-108) and is being dedicated for construction and maintenance of public utilities.

STAFF RECOMMENDATION:

Accept the Dedication.

MOTION: To approve, subject to staff comments and citing the findings in their report.

WELLS moved, **GAROFALO** seconded the motion, and it carried (10-0).

3-7. SUB2003-105– Final Plat –REDMOND ESTATES ADDITION, located on the west side of 119th Street West and south of 31st Street South.

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. **A memorandum shall be obtained specifying approval of the proposed individual alternative sewer system from County Code Enforcement along with a maintenance agreement.**
- B. **City Water and Sewer Department** requests a petition for future extension of sanitary sewer and City water services. **The Subdivision Committee required the submittal of a No Protest Agreement of an unlimited duration for future extension of water and sewer services. The Agreement shall specify that 50% of the costs of the future sewer line along 119th Street shall be assessed on an equal per-lot basis. Utility easements for future city services are requested.**
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **County Engineering** needs to comment on the status of the applicant's drainage plan. **Minimum pads need to be reviewed.**
- E. The plat denotes complete access control along the plat's frontage to 119th St. West. In accordance with Access Management Regulations, complete access control is required for rural arterials intersecting with local/collector streets. **Complete access control of 150 feet is needed along W. 33rd St and W 34th St from 119th St. West, with the exception of Lot 1, Block F which is recommended to be 100 feet of complete access control. The access controls along 119th St. need to be revised to only include property being platted.**

Access controls have been platted as requested.
- F. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings. The guarantee for relocation of the drive on Lot 7, Block F to 34th St. may be at time of street construction
- G. **City Traffic Engineering** requests a petition for future left turn lanes.
- H. Per Sedgwick County Fire Department, access drives to any structure in excess of 150 feet from the edge of the roadway will need to be installed prior to final framing inspection, preferably before the start of any above grade construction work. Such drive to be installed according to fire department specifications: (1) Twenty feet of drivable surface is provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather with provisions for turning fire apparatus around. (2) To meet fire department specifications, the surface will need to be an all-weather material consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4 inches in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed)
- I. The applicant shall guarantee the installation of the proposed streets. The cul-de-sacs need to be a 36-foot rock standard. The 32-ft standard is needed for the other streets. This guarantee shall include the installation of a temporary turnaround at the terminus of Firefly Drive at the plat's north line. The temporary turnaround should be denoted on the face of the plat and the plat's text should indicate that the vacation of the temporary turnaround area will be effective upon the extension of the street northward.
- J. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- K. **GIS** needs to comment on the plat's street names. **The street names are approved.**
- L. The plat needs an onsite benchmark.

- M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- N. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). The City and County GIS Departments will use this.

NEIL STRAHL Planning staff. This plat was deferred from our last MAPC meeting. Three scenarios were presented as possible ways to serve this site. One would be a petition for future sewer and water services as requested by City Water and Sewer Department. The second way would be a no protest agreement as recommended by the Subdivision Committee. The third way would be a combination of those two as offered by the applicant which consisted of petitions for mains along 119th and a no protest agreement for the internal lots.

The plat was deferred at our last meeting in order for City Law Department to provide a legal opinion regarding the validity of petitions for future municipal services in the three-mile ring. Joe Lang is here today to address the Commission.

JOE LANG City Law Department. I was asked for a legal opinion on water and sewer petitions in the three mile unincorporated area, and the water and sewer asked for the petitions for future extension in an area that was anticipated to be served by the City. You heard the comments the last time by David Warren, the Director of Water and Sewer, of his policy considerations of why they wanted those petitions.

What I am wanting to address today, based upon the motion that was made, are the legal considerations; decisions that are of a policy or political nature may be different, and made by either this body or the governing bodies, but just legally what can and can't be done. As you know, this is a plat that includes guarantees for improvements, and the plat goes from this body to, in this case, both governing bodies because it is in the three-mile, but unincorporated area. Under the Subdivision Regulations, the plat will first go to the City Council for review and approval before going to the County Commission, and the City Council has the option to approve and accept the plat or refuse to accept it.

We have looked at the question that was raised because we had not given a good review of petitions versus other alternatives for guaranteeing improvements. First of all, the Subdivision Regulations provide that a developer must guarantee that improvements will be installed, but it only provides certain ways that this can be done. One is by financial securities, and the regulations list a number of types of financial securities that are appropriate, and the other way is by a petition, which is a statutory procedure that follows the guidelines of the State Statute, and was approved by the City Engineer and is initiated by a resolution of the governing body.

An alternative to the petition method is not specifically allowed by State Statute or City or County Regulations. It doesn't say that there aren't other methods that might be worked up, but they are not specifically allowed, and I think it may be a policy matter for the future if the City and County governing bodies and the recommendations of this body want to amend the Subdivision Regulations to look at other alternatives. But, in doing this process there is a State Statutory procedure, the General Improvement Assessment Law 12-6A01, that we must follow. Many of you are quite familiar with the whole process; with how improvements are installed.

Now, the question was raised last time whether petitions are as good as this no protest agreement, and whether they provide adequate protection to the governmental entities, and whether or not the no protest agreement can be used. Our opinion is no. The petitions are a valid and enforceable tool with long standing provided by State Law. We spent quite a lot of time tracking down the statement that the petitions become stale. There is no law that the petitions become stale after a certain point. There is no legal basis for that, and in fact Bond Council has not said that.

So what we have here is a statutory procedure that is tied into a Resolution of Advisability that the governing body has to find that the improvements are appropriate. The petition is filed of record so that the property owners are aware, and more importantly the future property owners are aware or should know, and there is no reason for the City not to use this procedure legally.

What Bond Council has said is, if the petitions are old you want to make sure that the Resolution of Advisability was in fact adopted, and that the petition was filed of record. This would be true of any type of real estate-based document you are using. When they start getting a little old, check and make sure that the procedures followed at the time they were adopted are proper. But for a properly signed, recorded petition, there is no reason that it can't continue to be enforced for a number of decades.

Also, there is no reason for the MAPC or the City to want to agree to or require these no protest agreements. It is something that we haven't used. It doesn't provide any benefit to the City that we can see, and it certainly has the risk of providing less notice and advisability to future owners of property. Finally, it is not authorized by Statute or Subdivision Regulation, and we would be hesitant to use it in the current context.

Finally, I have seen one example of a proposed no protest agreement, and I certainly wouldn't approve it as to form. It just does not look good. The ultimate decision will be the governing bodies, of course, and they are going to make a decision within the law, but also take into consideration the political realities that they are facing.

It is our recommendation to you that you not accept this Subdivision Committee's recommendation of using no protest petitions.

WARREN This will go to the City governing body as well as the County Commission. Are you implying or suggesting that the City Council has the right of veto over a County plat? If the County Commission approves this plat and the City objects to it, what is the situation there?

LANG Again, legally the City has veto power over the plat. It does not go on to the County if the City Council does not approve it because it is in the three-mile service area. From a policy consideration, this is where planning is going on for the City, for its streets, water, sewer services and planning into the future with the help, of course, of the Comprehensive Plan and other planning documents of where it might be providing services in the future. So the State Law gives the City a voice in that area as to what is going to be happening in an area that is likely to be annexed in the future.

WARREN I understand what you are saying about a voice. I am strongly questioning your position of their veto power so that it would never move any further. This is a brand new set of circumstances that we are dealing in, and I say that with reference to, maybe, the last 12 months where we have an optional sewer system which has never here before been a factor in these cases. If the City disagrees with the County in this method of sewer, then they can simply veto the plat.

LANG Veto may be too strong of a word, but legally that is what it is. The Subdivision Regulations say that it goes to the City Council first.

WARREN I thought that was just for advisory to the County.

LANG No, it has to be approved by the City Council. That is our legal opinion from our office, and if anyone disagrees they can certainly say that. But, from a practical legal nature, when that property does become annexed into the City, the City can put these sewers in because there are no protest petitions allowed by State law for sewers. Now, the City Council often hears these things as a practical political matter, but as a legal matter there is no notice of hearing. There is a no protest petition for sewer systems. Now, when the City Council does its Resolution of Advisability, certainly what it is going to look at is what those current residence or future residences have available to them already, and is there an appropriate sewer system there. I would suggest on David Warren's comments that there probably is not going to be. But as a legal matter, City Council has to find that it is advisable to put this sewer in before they do it.

WARREN So that I understand, what you are saying is that, in your opinion, petitions drafted at the point of platting or zoning or whatever it may be are endless, and go on indefinitely?

LANG Bond Council would not commit to "in perpetuity," but they certainly would go on for a long time.

WARREN What does that mean?

LANG It means that the further out that you get, the less chance there is that someone is not going to have notice, or be aware of them. That the cost estimates these petitions have within them are cost estimates, which is something else the no protest agreement didn't have. The petitions have cost estimates in them. If they have gotten so far out of sync with reality there may be a basis to protest, but that would be a legal challenge at some point of the future.

WARREN The whole question was, when it was brought to you, how long is a petition good for, and there has been a lot of dispute on that over the years. Is it ten years, fifteen years? I think I am hearing that the dispute is still there.

LANG Yes, the dispute is still there. Again, as a policy matter it might be that this is determined to be appropriate to give clarity to that and set a time limit in the petitions, but that would have to come from some other source and that would be a voluntary offer by the governing bodies to have a limit on petitions.

WARREN The state has not statutorily recognized a no protest petition per se, however this Board quite often sets conditions on a number of items that the State hasn't really sanctioned. I am wondering, just because the state hasn't sanctioned a no protest petition, if a developer is willing to stand up and say I hereby suggest or present a no protest, that we will accept it. Are you declaring that is illegal?

LANG No, again State law sets forth guidelines for what a petition looks like. There is not that for a no protest agreement. But, as you say, we can do a lot of things beyond what state law is. State law does not prohibit those. What I am saying is that our Subdivision Regulations do not offer that as one of the alternatives. It lists the alternatives for guarantees. Again, the governing body can make a decision that it doesn't want any guarantees. It can always say that, but I don't know that is a real practical decision.

WARREN But the Subdivision Regulations wouldn't prohibit a developer from voluntarily encumbering this proper with a no protest petition?

LANG No, it wouldn't prohibit it. It would be a policy decision whether or not the governing body wanted a better guarantee than that.

WARREN There is an option that this Board either accept a petition out and out and/or to accept a no protest petition. We could do either, couldn't we?

LANG You can do it, and then the governing body can decide if it is acceptable to them, and in this case both the City and County governing bodies.

SCHLEGEL Joe, please clarify, Commission Warren's question was along the lines of whether the petitions have an expiration date, and I thought you said earlier there is no real expiration date with a couple of qualifications that you threw in there.

LANG There is no real expiration date on petitions. They go on forever. But, the Bond Council has to make some determinations when they do bond financing, and they say the further out they are the more work that has to be done to assure that the petitions are still good. Where this story got started was a 25 year or more old petition that had not been filed of record, and no one could find the Resolution of Advisability, and that was a bare naked petition out there with nothing else. Bond Council didn't like that, but it was not invalid. It is just that Bond Council was uncomfortable with it. But with the care that is given things today, and the records made in a different circumstance, a 25-year old one certainly wouldn't have any problems.

BISHOP The difference between the two, in terms of the consumers of the proposed subdivision, is having the awareness of the fact a petition or a no protest was there, and what it might mean in terms of future costs that they might want to take into consideration if and when they were considering purchasing a property in that area. How would that work? Is it filed at the Clerk's office or do realtors have access?

LANG The petitions are filed of record with the Register of Deeds, and they should be of record when someone buys property. It should show up in the search. A no protest agreement could likewise be filed, but there is no legal criteria or standards of what are to be done with those. It seemed that with all the protections in a protest petition, if you look at one of those documents, it has the property, the dates, what the projected cost of the improvements are going to be and what the interest over time would be. All those things would be in there.

BISHOP So there would be an opportunity for a consumer to have an idea or a ballpark of what the future cost associated with that property would be.

LANG Right, and the draft no protest that I have seen do not have that kind of information now.

GAROFALO So you are saying that the no protest petitions that you have seen probably vary in what they contain?

LANG Probably, but I have just seen one, and it was something new to me, and it has been new to almost everyone else that I have had look at it.

GAROFALO So there is no standard like there is with a petition?

LANG Right.

WARREN I don't think we want to discount the vitality and the importance and effectiveness of this no protest petition because it can be filed right along with and have equal weight to restrictive covenants. Restrictive covenants obviously encumber property, and they are done by somebody that has control over that property early on. I see no reason why no protest petitions wouldn't be equally as effective and encumbering as restrictive covenant would be.

LANG It could be drafted and filed in such a way to be equally informative.

WARREN I think that was our intent.

LANG It would need more work than the drafts I have seen. The petition has a lot of other stuff in there including an agreement to annexation, and that sort of thing that the no protest will have no reason to have in it. Plus, a petition is someone requesting a project actually to be undertaken if, at such point, it is termed to be viable. A no protest is merely saying we are not going to protest this. When you get enough petitions the governing body can order these things in without notice and hearing because everybody has already agreed to it. With a no protest agreement that is not the case, because you are at the stage of protesting when the governing body has done that it is further along the route, and does not provide the governing body with the same type of assurances up front that there is going to be support for this project.

WARREN That is exactly where we are. We are not talking about which document would be better stated and more effective; we are talking about what would be fair to the property owners. Our concerns are not whether a protest petition is more effective and better written than a regular petition. It is what they do, and what they can potentially do to the owners of the property.

LANG I think for planning purposes the whole community is better served by having some understanding up front by where these projects are going to be going in, because what is planned for what capacity is developed by the sewer and water, streets and so forth. If that doesn't develop that way, if there is poor planning, then the taxpayers as a whole are going to have to pick that up. Then you have a fairness between individual property owners versus the community as a whole.

MITCHELL If no petition is required by the Planning Commission, what would be the City Council's attitude in what that could do as far as accepting the plat, accepting the dedications, or refusing to approve the plat?

LANG They have only two options, to either accept it, or reject it.

MITCHELL What do they accept? Just the dedications? Can they kill the plat if they do not accept the dedications?

LANG If the dedications are a part of the plat, the effect would be, yes, that it would kill it because the plat has in it easements, dedications, covenants, guarantees for improvements. Those things have to be listed in the plat. So if any one of them is not wanted by the governing body, then their option is to not accept the plat. Then, when the plat is not accepted there is nothing to file of record or subdivision going on.

MITCHELL What would be the applicant's opportunity for appeal at that point?

LANG It would have to be a legal challenge to a legislative decision of the governing body - a court case - and it would be a different standard than a zoning appeal.

MITCHELL That would be at District Court at Sedgwick County?

LANG Yes.

DUNLAP Has the county looked at this question?

BOB PARNACOTT Joe and I discussed this as well as Rich Euson. The County Counselor has addressed this, which is this concept of the petition versus the agreement and how long they last. We agree it is more a City issue than a County issue. Even though it is in the County area, it is in the three-mile ring, so it is a City issue. I would concur with Joe regarding that.

BARFIELD I understand that we have already approved one of these no protest petitions, and I am wondering where in the pipeline is that application right now?

BISHOP Wasn't that the preliminary plat that has not been approved because the zone change was not approved?

STRAHL That is Hilltop Acres, and that plat was approved by MAPC and has not proceeded since then, and has not yet gone to the governing body.

WARREN Neil, the Subdivision Committee looked at three options, and you suggested that we approve the second one, and I think maybe I ought to correct you. We approved the third option, which is the blended one, which is to accept the petition along the main artery and accept the no protest on the interior.

STRAHL Not for this plat.

WARREN That was the intent.

STRAHL No, for this plat the Subdivision Committee required a no protest for future water and sewer services and 50 % of the cost of the future sewer line would be assessed on an equal per lot basis.

WARREN For the arterial, I thought that was your third option.

STRAHL No, this was the second option. The third option was requested by the applicant for the petitions for the section line road and the no protest for the internal lots and that was not agreed to by the Subdivision Committee.

WARREN We agreed that he would petition the sewer across the front of his property.

STRAHL That was for Hilltop, not for Redmond.

WARREN That was not the intent.

PHIL MEYER, BAUGHMAN COMPANY, 315 Ellis, Wichita, KS. This thing has been evolving, and Hilltop Acres is a plat that was in front of this request, and it showed up as a preliminary plat two weeks before this one did at Subdivision, and then it showed up as a final plat two weeks before this one at Subdivision. Hilltop Acres, at the first preliminary plat, was required petitions on everything because the owner stood up and said he didn't agree to a no protest agreement. Then Redmond Acres came in, and I started with Engineering, and Sewer and Water, and trying to find a compromise, and that compromise that we were looking for and that we were offering was petitions in the arterial where the applicant paid for 1/2 the cost of the sewer and water so that nobody could claim we were blocking or hindering development. Development could go right past this site, but that we would supply a no protest

agreement for all the interior stuff. Hilltop Acres was approved as a final plat by the MAPC with that condition. Redmond Acres was approved by Subdivision with no protest agreements everywhere. At the last MAPC, I offered to get some consistency on these developments and that we go ahead and approve this plat just like the Planning Commission approved Hilltop Acres. That is, we will supply you petitions for sewer and water on 119th Street. We cover half the cost of the sewer and water main to get past the site, spread equally on every lot, and then we sign a no protest agreement for all the interior stuff. That is, again, how I would recommend and ask that you approve that today.

These no protest agreements have been done for numerous years, ten years that I know of. It is a document that City Engineering has prepared. The one that I turn in to Planning is the document I got from City Engineering that we use for no protest agreements. I can supply a lot of samples where we have used no protest agreements, and oftentimes MAPC approves those with City Engineering and me, as agent, in agreement. This is one we did for the Holzman Addition which is a plat MAPC approved 6-9 months ago. Wichita City Council approved and accepted this document within the last 2-3 months when we actually recorded the plat, and it is for no protest for sewer and water. Typically these are used more for pavement. That is kind of where they generated it from. They was a no protest agreement used for pavement. City Engineering requested that we supply a no protest agreement. This is a document we have been using for a long time.

In essence, it takes the protest rights away from the landowner, which allows City Council an easier method to approve it. Most of the horror stories that you hear from WCC trying to order in sewer or water, these agreements are not on file. They don't exist. So Council has the right to order in sewer where it is not available, but they met a lot of resistance. This is a tool that I feel they can use that takes away the complaints from the landowner. There isn't a time frame to it. I have been told through Engineering, and other communities around Wichita that use the same Bond Council, is that the Bond Council gets nervous using petitions that are over 5-7 years old. The petitions do carry a cost with them, and the inflation of that cost is 1% per month. So you get 7 years down the road and the inflation in that petition. You have to use judgment on how much is really equitable, and ought to be assessed to that lot owner. I like this solution over a petition that has got inflation in it because you are going to have a realistic cost. From that day it is a brand new petition that WCC is ordering in. You have taken the peoples rights away to protest that.

When we supply petitions to the City, those petitions, I don't think, are recorded at the Register of Deeds. Those petitions are held in the City Engineering office now. We file, and give to Neil with that a certificate of petition, a one page document that says, at City Hall, what those petitions are for, and you list the items that are petitioned so if somebody is buying a piece of property, and they really wanted to see those petitions, they would have to walk over to City Hall and dig into Engineering and pull them out and start looking at them. We give it to Neil, with a check for the recording cost, with the plat before it goes to Wichita City Council, and this document is handed to the person at closing. How many people read the documents; we can all talk about that, but they have been supplied the information, and given the opportunity to read the document, and it clearly states to them that as a condition of the plat by the MAPC they have given up their right to protest sewer and water in the future. The City has the right to put it in whenever they want to install it or whenever there is a need.

We don't know when growth and development will be coming by this site or when sewer is going to be available, but why take the risk on having a petition that is 10 years old, and you don't know the validity on it, and the inflation has grown to a enormous amount when you can have this document that you know is going to be good in 10 years. It is a covenant running with the land. It states in the last paragraph, and the homeowners don't have a right to protest it. I am not sure why the City would want to run the risk of having a petition that they may not be able to use later if challenged in court or by an attorney.

I always thought the MAPC set the conditions for a plat. City Council, when it is in the City, accepts the easements and dedications. County Commission accepts the easements and dedications. They don't set the conditions of the plat. Now, in a situation like this when we are in the growth ring, I thought the City was accepting the easements and dedications or approving them, and the County was actually approving them. I didn't know the City had the right to actually add new conditions, or change conditions on a plat. I thought by State statue that was a MAPC decision.

BISHOP You said that with a no protest option it would be possible for the City, in essence, to order in water and sewer, whenever they want to or whenever there is a need. Which is it?

MEYER It is the City's discretion. That is one thing we are in disagreement. If this alternative sewer system is working properly, we have agreed to pay the cost to run sewer past the site so we are not blocking development if every one of those lots has alternative sewer, and are all working great.

BISHOP What if some of them aren't working great?

MEYER Then this document gives the City; typically on a petition you need 51% of the homeowners agreeing to do something. If 20% of those are not working right, and some of those homeowners are going to the City or Wichita City Council, and saying we want sewer, this is the tool the City can use to put sewer in at that point and at that time. I don't care if we sign petitions, or if we do a no protest agreement. If we get 8-10 years down the road to run sewer in that Subdivision it becomes a political animal. It will be decided by Wichita City Council whether they want to force it in.

ROBERT KAPLAN, attorney. I have been retained by Don Coleman. What is the life of that petition? Today another issue has surfaced, and that is what is the role of the Wichita City Council in a County plat? I accept Mr. Lang's statement that there is no court decision in the State of Kansas, which defines the life of a guarantee petition. There is no law on this subject. However, if you go to the Subdivision Regulations, and keeping in mind that we are talking about sewer services, I did give you a handout and that is 8-103-C5. There are three things in that I think are very relevant to determining the life of a petition. First of all, the MAPC is obligated, and it is your responsibility for setting the date for completion of the installation of the municipal sewer facility. It says the amount of time available to the governing body shall be determined by the Planning commission at the time the final plat is approved. It goes on to say that the amount of time shall not exceed five years. So when you approve this final plat you should extend your decision as to the amount of time the BOCC has to get these services in place, and you can't go beyond five years. The first and last sentence say the same thing, for any of the above requirements, and that refers back to all of Section 8-103c which is sanitary service; that call for action by a governmental agency, the requirement for municipal-type sewer facilities shall be

made void if they don't meet that time constraint. Then it goes on to say if the governing body fails to act within the established time period the Subdivider may proceed with approved individual treatment systems.

In this case as I understand, Mr. Coleman is putting in an alternative sewer system, which are presumably to extend until municipal services are available, at least that is the theory. However, if you set a five year limitation, and you must set a limitation under this regulation, and you can't go out any further out than five years, and the governing body doesn't have a system in place, then he is free to continue with his alternative systems. I think that is the clear language of the regulations.

On the issue that Commissioner Warren, and other commissioners brought up, if you look, the Subdivision Regulations need some work. There are contradictions in them. If you look at Section 4-305, it says that before a final plat is recorded it shall be submitted to the appropriate governing body for approval and acceptance. Streets and other public ways, service and utility easements, and land dedicated for public use, the acceptance of covenants, and the approval of guarantees for improvements associated with plats. Who is the appropriate governing body? It is the County Commission. Now within the three-mile ring Mr. Lang is exactly right, there is one provision in the Subdivision Regulations, although they contradict themselves, where it says it goes to WCC for review and approval. What does that mean? There are no criteria for review. What are they suppose to approve? They can't accept dedications in the county? It is county ground. It is not city ground. The county, under specific regulations, accepts the guarantees. What is it that the City does? What if they don't approve it? Where do you go from there? The ultimate authority is the Board Of County Commissioners.

MITCHELL I don't agree with your timeline that when the municipal sewer reaches this property they would be required to connect to that municipal sewer even if their alternative system was working. That has not been the concept that we have been working under.

KAPLAN The Statue simply says that you set the time within those services are available, and that you can not set that time beyond five years, and really what I am doing is giving you a reading of what the Subdivision Regulations say, and they say if the timeline is not met, then the Subdivider is free to proceed with his alternative systems which are going to be in place. The resolution and the county do authorize the alternative sewer systems.

GAROFALO In your opinion, would this regulation with this fiveyear time limit also apply to no protest agreement?

KAPLAN I don't think so. I think that perhaps that is the advantage of the no protest. I think the no protest can extend on the indefinite basis. In my opinion, the petition is an encumbrance on the land, and if I agree and sign that then, I think, I am living with a permanent indefinite encumbrance lien on my land for the cost of those improvements. I don't think the law will favor that, and so I think the no protest, which simply says that when those services become necessary, at the discretion of the governing body, then at that time those costs will be assessed.

GAROFALO You don't think there would be any time frame with the no protest agreement?

KAPLAN I don't think so because there is not a provision in the Subdivision Regulations specifically for the no protest.

GAROFALO In you research do you find any challenges to the no protest petitions?

KAPLAN No.

MARNELL In reading this handout that you provided, what I get out of it is that if the developer does not receive all of the governmental approvals within a five-year period then they could go forward with the individual treatment systems. This doesn't look like it would negate a petition that could be lying there that could still be enforced years later, if the City chose to do so.

KAPLAN That may be your reading of it. Looking at the last sentence, it says, if the governing body fails to act within the established time period the Subdivider may proceed with approved individual treatment facilities. The first sentence says, that the requirement for municipal type sewer facilities shall be made void if the governing body does not fulfill its obligation within a set period of time.

MARNELL I guess reading it that way then they would void the petition if the petition was what was called in for the municipal requirement.

WARREN No doubt, we need to tweak our Subdivision Regulations. The County has approved a new sewer system called the Alternative Sewer System, and we have what is in effect now a petition to affect that system at a cost of about \$10,000 a lot. It is not a cheap system. This applicant is willing to file petitions with guarantees that this service would be put in effect as an alternative sewer, and if it works, it will probably be good for 30 years.

KAPLAN From what I have learned about the alternative systems is that they are a satisfactory substitute for municipal system.

BISHOP The date on this Subdivision Regulation that you handed out is dated March 19, 1999, and yet it refers to approve individual sewer treatment systems.

KAPLAN That came off the planning web page so that should be current.

BISHOP Are you familiar with the redraft of the Unified Zoning Code taking place?

KAPLAN There are contradictions of what the City does and what does the County do in the final approval of these plats, and the regulations contradiction each other.

BISHOP You are aware that the City has filed a resolution of disapproval of cases that are even further out than the three-mile ring.

KAPLAN I am aware of that, and the County went ahead and approved it regardless.

LANG Obviously, there is disagreement on legal interpretation on some matters here. Mr. Kaplan suggested that this language, in effect, limited petitions to five years. That is not the case, and petitions remain good longer than that. We just don't know how long. I also think Mr. Marnell's interpretation of Section 8-103C5 is a closer interpretation in talking about what must be done in five years. Because if you look back through the preceding sections, it talks about approval from Engineering, KDHE, Environmental Health, and I think we are talking about those types of governmental improvements, not approvals, not the construction of the improvements. In fact, in 8-103C2 it says that mains and sub-mains shall be installed at the direction of the governing body. The extension of main shall be made at the discretion of the governmental body with no time limit mentioned there. In the next section, in urban subdivisions, it talks about that these municipal style sanitary sewers must be approved by the appropriate engineer. So even if the five-year limitation were to apply when a property could move on with their own sewer, if that has been annexed into the City by that time. I would interpret this to mean that sewer system would have to be approved by the City Engineer.

Mr. Meyer was suggesting that I was saying that the WCC could change a plat. I was not saying that. They cannot. They can accept and approve or reject. We would encourage you to use the petitions. These no protest agreements have been floating around, and law department has not approved them and was not aware of them, but they started out in paving projects, and they certainly are more appropriate for some other types of projects.

JERRY BLAIN, Wichita Water and Sewer Department. One of the issues that we have with this plat is not necessarily should a plat have alternative sewer systems, it is the location of this plat in the immediate growth area of the City of Wichita, and it is going to be annexed in the immediate future. Sewer and Water will be available within one-half mile of this plat in the very near future. We already have sewer lines under design for a plat one-half mile away from this.

I also wanted to talk about doing no protest petitions or no protest agreements for internal lots and agree to pay 1/2 the cost of water and sewer lines down 119th Street. Water lines will go down 119th Street, so if they agree to pay that would not block the extension of the water system. There will be no sanitary sewer line down 119th Street. Sewer lines are always in the rear.

BARFIELD In your opinion, certainly within 5 years, water and sewer will be available to this area?

BLAIN Yes.

BARFIELD In your opinion is the quality of water service better than the alternative sewer system?

BLAIN I don't have water samples of what is out there now but my history is that whenever you put water lines out there they were anxious to connect because of the general water quality of the ground water is marginal. The long-term water quality with alternative sewer systems is still suspect in terms of its removal of nitrates and everything because we do not have a history of the maintenance of alternative sewer systems.

WARREN You have stated that in all likelihood that sewer is going to be going down 119th Street. Are you aware that if we required this plat that easements be granted as if it were an urban development?

BLAIN Easements, but what I have read in the agreements is that the payment for the cost to install the sewer main, not the laterals, would only be good for a sewer main that goes down 119th Street. It does not say the sewer main that would provide service to that subdivision, excluding laterals. It just says a main down 119th Street and there will be no sewer down 119th Street.

WARREN Are you aware that this plat could come in at our next meeting with 5 acres tracts served by lagoons and septic systems, and we would have to approve the plat because it would meet every condition, and the likelihood of you getting sewer and water on those 5 acres tracts would be nil. The cost would be too prohibitive, and yet that is their option.

BLAIN The economic viability of 80 acre sections broken into 5 acre tracts is not the same as a 80 acre tract broken into 1 acre lots, and that you will not see a lot of those developments because it is not economically advantageous.

WARREN Don't bet on it.

MARNELL On 119th Street, you said there is not going to be a sewer main there. Is that because you are aware of existing design?

BLAIN I am aware of the design of the sewer mains throughout the City of Wichita. We don't put mains down major arterials. The mains go in the low areas at the bottom of the hill and they go in the rear of the properties.

MARNELL What are the sewer lines in that area in the right-of-ways, what types?

BLAINS Laterals, 99.9% of the laterals are in the rear of the property, 99% of the mains are in the rear of the property. We have some interceptors with huge collector systems that might end up in the road right-of-way because generally they are built after these, and are needed to increase the capacity of the system going to the wastewater treatment plant.

WARREN I could show you a dozen of developments that have sewer out in the front.

SCHLEGEL I want to say that we stand by the staff recommendation, and that is approval with the petitions, and I think Joe Lang has agreed and approved that is probably the best way to go with this type of subdivision.

MEYER We had that conversation with Hilltop Acres at Subdivision Committee, different plat, same condition on sewer, and Vicky from City Engineering had pointed out that the sewer main may go down 29th Street, and it may go down the back. We didn't care if it went down the street right-of-way or if it went down the back. We were supplying access through the development, and we had the

easements down the back. This particular piece of property needs to be served by the new sewer treatment plant they are talking about. I believe that a no protest agreement is the best end solution for a future Council member when they face this battle.

MOTION: To approve the plat with the petition method for the establishment of future water and sewer services.

BISHOP moved, **BARFIELD** seconded the motion.

SUBSTITUTE MOTION: That the plat be approved as per Subdivision Recommendation with modifications that have been offered here by the applicant for the no protest agreement and for the necessary access through easements for future sewer to pass the project.

WARREN moved, **DUNLAP** seconded the motion.

BISHOP I have three major concerns about this. One is that their notice to the consumers of this subdivision of what their future cost might be. I believe that using the petition method is a more affirmative method, and it provides a specific amount and these are large lots. I think too often there have been situations where the County has created problems that the City has to come in and solve, and the City gets beat up about it. I think the City and the County need to do some hard work to get their act together without undue cost to average taxpayers that do not even realize this battle is going on. Lastly, the fair taxpayer act, it sounds to me as if what we are creating are little water and sewer Eastboroughs out there, and if it is true that the alternative sewer systems are efficient and will last forever, then we have an increased density; this is 53 homes. There will be more like this, and we even have some commercial applications for alternative sewer systems, and if they get to go on forever then the rest of us have to accept the rest of the cost for municipal services.

WARREN Nothing is perfect in our business, but we have options and alternatives here, and one of them is to go back to the 5-acre tracts. This is the best use of the land that we can make of it. We are encouraging people to do this, and the cost of doing this is about \$10,000 to do this. If we deny this, we can forget these alternative sewer systems and we will go back to the 5-acre tract.

GAROFALO There for a while I was thinking the no protest petition sounds good, but then I think about the planning and the proximity of this plat to the City, and the possibility of the City going out there within a short time, and will annex this area within a short time and the petition process would be the better alternative.

BARFIELD The reason we are discussing this today is because we asked for a legal clarification. We have heard from the City and the County Law Departments.

MARNELL I am not going to support the substitute motion. However, I think the points Commissioner Bishop made are valid, and the number one is the notice that goes with the petition that is filed with the land, and there can be no question that the consumer that buys these lots will have valid and adequate notice with that.

WARREN What we are doing is killing this plat, and this plat cannot move forward without the alternative sewer systems. The City can always bring that sewer in there because of health, safety and welfare. They don't even need 51%; they can bring it in any time they can make a case that it belongs there.

MARNELL I understand that and agree with you. The best use of the land is not to make it into 5 acre tracts however, I still think the end buyer of these lots need the protection with that running with the land, and it is going to show up and you can't hide it.

WARREN There will be plenty of notice. This thing will be in the air for a long time before that sewer is brought in and there will be cost available.

DUNLAP I think we have problems with the Subdivision regulations. Do you think we can review this sometime? We can't go through this every time.

SCHLEGEL I agree, we will be talking about a workshop for the Planning Commission.

SUBSTITUTE MOTION: That the plat be approved as per Subdivision Recommendation with modifications that have been offered here by the applicant for the no protest agreement and for the necessary access through easements for future sewer to pass the project.

WARREN moved, **DUNLAP** seconded the motion, and it carried (7-5) **BISHOP, BARFIELD, COULTER, MARNELL**, and **GAROFALO** opposed.

4a. **Case No.: CUP2003-55 DP269 (Associated with ZON2003-53)** - Jeff Bannon Auction & Realty, Inc., c/o Jeff Bannon (owner); Baughman Company, PA, c/o Russ Ewy (agent) Request Creation of The Spencer's Cove Commercial Community Unit Plan on property described as;

and

4b. **Case No.: ZON2003-53 (Associated with CUP2003-55 DP269)** - Jeff Bannon Auction & Realty, Inc., c/o Jeff Bannon (owner); Baughman Company, PA, c/o Russ Ewy (agent) Request Zone change from "SF-20" Single-family Residential to "LC" Limited Commercial on property described as;

"LC" Limited Commercial

That part of the N 1/2 of the NE 1/4 of Section 6, Township 27 S, Range 1 W of the Sixth P.M., Sedgwick County, Kansas, described as commencing at the NE Corner thereof; thence, S88°49'10"W along the north line of said NE 1/4 a distance of 330 feet for a point of beginning; thence, S00°00'00"W parallel with the east line of the NE 1/4 a distance of 660.00 feet; thence, S88°49'10"W parallel with the North line of the NE 1/4 a distance of 840.43 feet, more or less; thence, N00°00'00"E parallel with the east line of the NE 1/4 a distance of 660.00 feet to a point on the north line of the NE 1/4; thence, N88°49'10"E along the north line of the NE 1/4 a distance of 840.43 feet, more or less, to the point of beginning, subject to public right-of-ways of record.

"NR" Neighborhood Retail

That part of the N 1/2 of the NE 1/4 of Section 6, Township 27 S, Range 1 W of the Sixth P.M., Sedgwick County, Kansas, described as commencing at the NE Corner thereof; thence, S88°49'10"W along the north line of said NE 1/4 a distance of 1170.43 feet, more or less, for a point of beginning; thence, S00°00'00"W parallel with the east line of the NE 1/4 a distance of 300.24 feet, more or less; thence, S88°49'10"W parallel with the North line of the NE 1/4 a distance of 479.57 feet, more or less; thence, N00°00'00"E parallel with the east line of the NE 1/4 a distance of 300.24 feet, more or less, to a point on the north line of the NE 1/4; thence, N88°49'10"E along the north line of the NE 1/4 a distance of 479.57 feet, more or less, to the point of beginning, subject to public right-of-ways of record.

"GO" General Office

That part of the N 1/2 of the NE 1/4 of Section 6, Township 27 S, Range 1 W of the Sixth P.M., Sedgwick County, Kansas, described as commencing at the NE Corner thereof; thence, S88°49'10"W along the north line of said NE 1/4 a distance of 1170.43 feet, more or less; thence, S00°00'00"W parallel with the east line of the NE 1/4 a distance of 300.24 feet, more or less, for a point of beginning; thence continuing, S00°00'00"W parallel with the east line of the NE 1/4 a distance of 359.76 feet, more or less; thence, S88°49'10"W parallel with the North line of the NE 1/4 a distance of 479.57 feet, more or less; thence, N00°00'00"E parallel with the east line of the NE 1/4 a distance of 359.76 feet, more or less; thence, N88°49'10"E along the north line of the NE 1/4 a distance of 479.57 feet, more or less, to the point of beginning.
Generally located South of 29th Street North and west of Maize Road.

MAPC DEFERRED NOVEMBER 6, 2003

GOLTRY This item was deferred from 11-6-03. The following memo is being distributed and provides the revised recommendations and findings of staff. It **replaces** the "Recommendations" and "Findings" section of the original staff report. The original Staff Report is provided following this memo.

TO: *Metropolitan Area Planning Commission*

FROM: *Donna Goltry, Principal Planner, MAPD Current Plans Division*

DATE: *November 17, 2003*

SUBJECT: *Revised Recommendations for CUP2003-00055 DP-269 Spencer's Cove C.U.P., ZON2003-00053*

Based on the revised community unit plan submitted by the applicant, staff is recommending altering the previous recommendations given in the staff report dated November 6, 2003.

The requested revisions consist of the following:

- (1) split Parcel 1 into two parcels and request zoning of "NR" Neighborhood Retail for revised Parcel 2 and "GO" General Office for revised Parcel 1;*
- (2) continue to request "LC" zoning for Parcel 3 (formerly designated Parcel 2);*
- (3) change restrictions on "LC" uses for Parcels 3 and 4 (formerly Parcels 2 and 3) to eliminate theatres or bowling alleys and car washes, but to allow drive or drive-through window service for restaurants, allow commercial uses in excess of 8,000 square feet, and allow convenience stores with gas islands, service stations and vehicle repair, limited, so long as the vehicle repair does not involve outdoor storage of parts and vehicles and parking of vehicles for repair for over 36 hours;*
- (4) add cross-lot connections for the C.U.P. with the parcel to the east;*
- (5) include requested transportation improvements; and*
- (6) add technical additions/changes to the general provisions of the C.U.P.*

The revised C.U.P. kept the requested gross floor area at 35 percent, and requested the language on the screening wall be changed from being required adjacent to residential "zoning" to residential "use".

Based on this revised C.U.P., staff is submitting the following recommendation to replace the "Recommendation" and "Findings" of the November 6th report.

REVISED RECOMMENDATION: *While the proposed C.U.P. is not in conformance with the "Wichita Land Use Guide" recommendation of low density use, it is generally in conformance with the recommended commercial locational guidelines for Parcel 3 and Parcel 4 regarding site design to limit noise and activity from adversely impacting surrounding residential areas.*

The requested rezoning to "NR" (Parcel 2) and "GO" (Parcel 1) uses lower intensity commercial uses as a buffer, and the C.U.P. would allow residential uses on the "GO" parcel. However, it is felt that rezoning Parcel 2 to "NR" and Parcel 1 to "GO"

would breach the residential/commercial boundary formed by the sewer easement from 21st Street North all the way to this property.

As discussed in the original report, the expansion of commercial activities westward from Maize Road conflicts with the Comprehensive Plan that showed confinement of commercial activities to the Maize corridor. The requested depth of 1,600 feet exceeds the typical depth of commercial activities extending from Maize. It is deeper than NewMarket Square, which is 1,100 feet deep and has used the 30-foot sanitary sewer easement as the westernmost boundary for commercial use. It is deeper than the C.U.P. approved on the northwest corner of 37th Street North and Maize (approximately 700 feet deep) and the C.U.P. on the southeast corner of 119th Street West and 29th Street North (approximately 850 feet deep along 29th).

The 30-foot sanitary sewer easement is an ideal boundary for the transition from commercial to residential use. By maintaining residential zoning on Parcel 1, the character of the 29th Street North corridor is preserved for being principally residential development except at arterial intersections. Intrusion of commercial use on Parcel 1 impacts the viability of surrounding residential developments already under construction or in the planning stages.

Residential development when combined with C.U.P. approval has typically allowed a greater range of residential dwelling types than a single-family subdivision. It is suggested that residential use on Parcels 1 and 2 could include a single-family, patio homes, zero-lot line, duplexes or townhouses, up to the maximum "SF-5" density of 57 dwelling units.

Staff would recommend allowing the 35 percent gross floor area as requested because to compensate for a disproportionately large drainage area anticipated as needed, which reduces available acreage for "LC" uses. Regarding changing screening wall from being required based on residential "use" rather than "zoning", staff recommends the language be kept as based on "zoning" but recognizing that if there is no need to add a screening wall because actual residential use is separated by another screening wall on an adjoining tract, then the requirement could be adjusted.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED for "LC" Limited Commercial for Parcels 3-5 and "SF-5" Single-family for Parcel 1 and Parcel 2, subject to platting within one year and subject to the following conditions:

A. APPROVE the zone change (ZON2003-00053) to "LC" Limited Commercial for Parcels 3-5 and "SF-5" Single-family Residential for Parcels 1-2;

B. APPROVE the Community Unit Plan (DP-269), subject to the following conditions:

(Condition #1 is omitted)

2. Add Proposed Uses to Parcel Descriptions for Parcels 1 and 2 – Those uses permitted in the "SF-5" Single-family district.
3. Change General Provision #12A to residential zoning.
4. Add to Parcel 1 Description: Maximum density of 34 dwelling units. Parcel 2 Description: Maximum density of 23 dwelling units.
5. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
6. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
7. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
8. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-269) includes special conditions for development on this property.
9. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: New development along 29th Street North between Maize Road west to 119th Street West has consisted of single-family development. The property abutting Parcel 1 on the south is being platted as Evergreen 4th Addition with single-family lots, and the property abutting Parcel 1 on the west was part of the overall preliminary plat for Evergreen 4th, approved March 13, 2003. The next addition to the west is Aberdeen Addition. Farther west is a potential site for a future Catholic church. The land directly north of Parcel 1 is zoned "SF-5" and most likely will be another single-family development. The land north of Parcels 2 and 3 is zoned "SF-20" and currently in suburban residential use.

The tract of land to the east that separates the application area from Maize Road is zoned "SF-5" and owned by the developers of NewMarket Square. NewMarket is located to the southeast of the application area, across a series of drainage detention ponds to handle the drainage from the area north of 29th Street North. The drainage continues under Maize Road to the area known as the Pracht Wetlands. A large sanitary sewer line is located in the 30-foot sanitary sewer easement on the eastern edge of Parcel 1.

2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with single-family use, and this would be in keeping with the trends along the 29th Street North corridor.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Rezoning and commercial development of Parcels 1 and 2 will have a detrimental effect on residential use under development along 29th Street North.

The impact of commercial use on Parcels 3 and 4 would be mitigated by the recommended conditions to exclude more intensive uses and limitations on overhead doors and parking/storage associated with vehicle repair, limited. If this zone change is approved, a similar request would be anticipated for the northwest and southwest corners of Maize Road and 29th Street North to complete the commercial pattern on the west side of Maize for the mile north of 21st Street North.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this area as appropriate for "low density residential" development, which is not in conformance with requested zoning. This residential pattern has been followed for the area west of the 30-foot sanitary sewer easement, and should be adhered to for Parcels 1 and 2.

Commercial use has been approved to the southeast of the application area on the east side of the sanitary sewer easement. This area was shown for office use on the Comprehensive Plan, which represents a shift in policy to allow commercial activity on the Maize corridor extending northward toward 29th Street North.

5. Impact of the proposed development on community facilities: The traffic increases from the development should be mitigated by the addition of accel/decel lanes and left-turn lanes, which would be identified in the traffic study. Other community facilities are being extended to serve new development in the vicinity.

Staff Report:

BACKGROUND: The applicant is requesting to create DP-269 Spencer's Cove Commercial Community Unit Plan, which would be a 19+ acre development with three parcels proposed for commercial use and one for drainage detention. The property is located west of Maize Road on the south side of 29th Street North. Parcel 1 is 6.6 acres and is located one-fourth mile west of the intersection of 29th Street North and Maize Road. Parcel 2 (2.95 acres) and Parcel 3 (4.19 acres) are nearer to Maize Road, but are separated from the intersection by another property in a separate ownership.

Proposed uses are all "LC" Limited Commercial uses except adult entertainment establishments, group homes, group residences, correctional placement residences, private clubs, taverns, and drinking establishments. No use restrictions are included to reduce the impact of drive-through windows and overhead doors on nearby residential areas or limitation on the size of retail activities to neighborhood scale.

Maximum building coverage is 30 percent; floor area ratio is 35 percent. Maximum height is 35 feet. Setbacks are 35 feet for the north property line; no setbacks are given for the east, west and south boundary lines.

The C.U.P. includes provisions for landscaping per Landscape Ordinance of the City of Wichita, and pedestrian connections between the buildings and 29th Street North. Lighting is limited to 24 feet in height. A screening wall is required along the west and south property lines where bordering residential zoning. The C.U.P. calls for architectural compatibility among the buildings and employing materials similar to surrounding residential areas.

Signage would be per the standard City of Wichita signage requirements with some additional restrictions on window signage and prohibiting wall signs on the south façade of buildings. It omits typical requirements for monument signage and height limits found in C.U.P.s and in the adjoining commercial development.

New development along 29th Street North between Maize Road west to 119th Street West has consisted of single-family development. The property abutting Parcel 1 on the south is being platted as Evergreen 4th Addition with single-family lots, and the property abutting Parcel 1 on the west was part of the overall preliminary plat for Evergreen 4th, approved March 13, 2003. The next addition to the west is Aberdeen Addition. Farther west is the potential site for a future Catholic church. The land directly north of Parcel 1 is zoned "SF-5" and most likely will be another single-family development. The land north of Parcels 2 and 3 is zoned "SF-20" and is currently the site of suburban residential uses.

The tract of land to the east that separates the application area from Maize Road is zoned "SF-5" and owned by the developers of NewMarket Square. NewMarket is located to the southeast of the application area, across a series of drainage detention ponds to handle the drainage from the area north of 29th Street North. The drainage continues under Maize Road to the area known as the Pracht Wetlands. A large sanitary sewer line is located in the 30-foot sanitary sewer easement on the eastern edge of Parcel 1.

CASE HISTORY: The property is unplatted. The applicant has requested annexation into the city of Wichita.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5"; "SF-20"	Vacant, suburban
SOUTH:	"SF-5"	Single-family residential
EAST:	"SF-5"	Vacant
WEST:	"SF-5"	Vacant

PUBLIC SERVICES: Current traffic counts are unavailable. Projected provisional traffic volumes for 2030 on 29th Street North west of Maize Road would be 11,000 vehicles per day.

The C.U.P. proposes six points of access onto 29th Street North. The Access Management Policy would restrict three of these points to right-in/right-out only.

Other normal public services are available or are in process of being extended to the site.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential" development.

Commercial Objective III.B encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

Residential Objective II.A.1 seeks to use community unit plans and other tools to promote mixed use development, higher density residential environment and appropriate buffering. As proposed, the C.U.P. places "LC" uses adjacent to low-density residential without intervening buffering of uses.

RECOMMENDATION: The proposed C.U.P. is not in conformance with the "Wichita Land Use Guide" recommendation of low density use nor is it in conformance with the recommended commercial locational guidelines for site design to limit noise and activity from adversely impacting surrounding residential areas nor with the residential objective of using the C.U.P., mixed uses, or higher density residential uses as an appropriate buffer.

The requested number of access points exceeds the recommended spacing in the Access Management Policy. Staff recommends the developer submit a traffic study to determine transportation improvements, including traffic controls, auxiliary lane arrangement and through lanes.

The expansion of commercial activities westward from Maize Road conflicts with the Comprehensive Plan that showed confinement of commercial activities to the Maize corridor. The requested depth of 1,600 feet exceeds the typical depth of commercial activities extending from Maize. It is deeper than NewMarket Square, which is 1,100 feet deep and has used the 30-foot sanitary sewer easement as the westernmost boundary for commercial use. It is deeper than the C.U.P. approved on the northwest corner of 37th Street North and Maize (approximately 700 feet deep) and the C.U.P. on the southeast corner of 119th Street West and 29th Street North (approximately 850 feet deep along 29th).

The 30-foot sanitary sewer easement that separates Parcel 1 from Parcels 24 is an ideal boundary for the transition from commercial to residential use. By maintaining residential zoning on Parcel 1, the character of the 29th Street North corridor is preserved for being principally residential development except at arterial intersections. Intrusion of commercial use on Parcel 1 impacts the viability of surrounding residential developments already under construction or in the planning stages.

Residential development when combined with C.U.P. approval has typically allowed a greater range of residential dwelling types than a single-family subdivision. It is suggested that residential use on Parcel 1 could include a single-family, patio homes, zero-lot line, duplexes or townhouses, up to the maximum "SF-5" density of 57 dwelling units.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED for "LC" Limited Commercial for Parcels 2-4 and "SF-5" Single-family for Parcel 1, subject to platting within one year and subject to the following conditions:

- C. APPROVE the zone change (ZON2003-00053) to "LC" Limited Commercial for Parcels 2-4 and "SF-5" Single-family Residential for Parcel 1;
- D. APPROVE the Community Unit Plan (DP-269), subject to the following conditions:
 1. Transportation requirements:
 - a. A site plan shall be required for review and approval by the Planning Director prior to the issuance of any building permits; the site plan shall ensure internal circulation within the parcels and joint use of ingress/egress openings and that private drive openings are not impacted/ blocked by the layout of parking stalls or landscaping.
 - b. Access points shall be in conformance with the Access Management Policy.
 - c. A traffic study shall be submitted to the Traffic Engineer for review prior to platting; the study shall evaluate the need for traffic controls, auxiliary lane arrangement and through lanes.
 2. General Provision #2 shall reference Article IV of the Unified Zoning Code.
 3. General Provision #6 shall be amended to add " , with the following additional requirements:"
 - a. Insert the word "interior" to GP#6C to clarify the provision applies to interior and exterior window display signs.
 - b. Add to D: "or wall... except for small directional signs as set forth in Section 24.04.190.1 of the Sign Code."
 - c. All ground signs must be monument type signs and limited to a maximum height of 20 feet.
 - d. No ground sign shall exceed 150 square feet in area.
 4. Add to General Provision #9A: "Limited height of light poles, including pole base, to 24 feet."
 5. Add to General Provision #11: "Parcels 2 and 3 shall share a similar landscape palette."
 6. Add to General Provision #15: "No predominately metal facades shall be allowed."
 7. Revise General Provision #17: "Uses in Parcels 2 and 3 shall be limited to those permitted by-right in the "LC" Limited Commercial district, and recreation and entertainment, indoor, and/or any use that requires Conditional Use approval in the "LC" district shall only be permitted by separate Conditional Use approval. No parcels shall allow the use of adult entertainment establishments, group homes, group residential, correctional placement residences, private clubs, taverns, and drinking establishments, nightclubs, sexually oriented businesses, theaters, or bowling alleys, car washes, convenience stores with gas islands, service stations, and vehicle repair, limited. No single use greater than 8,000 square feet in size except for a grocery store or drug store shall be permitted. Restaurants shall not have drive-in or drive-through window service. No overhead doors shall be allowed within 200 feet of residential zoning and shall not be facing any residential zoning district.

8. Add Proposed Uses to Parcel Descriptions: Parcel 1 – Those uses permitted in the “SF-5” Single-family district; Parcel 2 – See General Provision #17; Parcel 3 – See General Provision #17; Parcel 4 – Drainage purposes.
9. Add to Parcel 1 Description: Type of residential development: single-family detached, patio homes, duplexes and townhouses, limited to a maximum density of 57 dwelling units.
10. Limit maximum gross floor area to 30 percent for Parcels 2 and 3.
11. Add building setback lines of 35 feet on south, east and west property lines.
12. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
13. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
14. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
15. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-269) includes special conditions for development on this property.
16. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: New development along 29th Street North between Maize Road west to 119th Street West has consisted of single-family development. The property abutting Parcel 1 on the south is being platted as Evergreen 4th Addition with single-family lots, and the property abutting Parcel 1 on the west was part of the overall preliminary plat for Evergreen 4th, approved March 13, 2003. The next addition to the west is Aberdeen Addition. Farther west is a potential site for a future Catholic church. The land directly north of Parcel 1 is zoned “SF-5” and most likely will be another single-family development. The land north of Parcels 2 and 3 is zoned “SF-20” and currently in suburban residential use.

The tract of land to the east that separates the application area from Maize Road is zoned “SF-5” and owned by the developers of NewMarket Square. NewMarket is located to the southeast of the application area, across a series of drainage detention ponds to handle the drainage from the area north of 29th Street North. The drainage continues under Maize Road to the area known as the Pracht Wetlands. A large sanitary sewer line is located in the 30-foot sanitary sewer easement on the eastern edge of Parcel 1.

2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with single-family use, and this would be in keeping with the trends along the 29th Street North corridor.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Rezoning and commercial development of Parcel 1 will have a detrimental effect on residential use under development along 29th Street North. The impact of commercial use on Parcels 2 and 3 would be mitigated by the recommended conditions to exclude more intensive uses such as car washes and other auto-related uses and keeping the size of the commercial activity to the neighborhood retail scale. If this zone change is approved, a similar request would be anticipated for the northwest and southwest corners of Maize Road and 29th Street North to complete the commercial pattern on the west side of Maize for the mile north of 21st Street North.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The “Wichita Land Use Guide, as amended 1/02” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “low density residential” development, which is not in conformance with requested zoning. This residential pattern has been followed for the area west of the 30-foot sanitary sewer easement, and should be adhered to for Parcel 1.

Commercial use has been approved to the southeast of the application area on the east side of the sanitary sewer easement. This area was shown for office use on the Comprehensive Plan, which represents a shift in policy to allow commercial activity on the Maize corridor extending northward toward 29th Street North.

5. Impact of the proposed development on community facilities: The traffic increases from the development should be mitigated by the addition of accel/decel lanes and left-turn lanes, which would be identified in the traffic study. Other community facilities are being extended to serve new development in the vicinity.

GOLTRY The major point and substantial conversation between staff and the agent is whether or not the western parcel is allowed for a lower intensity type of commercial use, as they have requested for “NR” and “GO”, or whether it is kept to single-family zoning for residential use. The other difference is whether the screening wall is based on being adjacent to a residential zoning district, as required by the Zoning Code, or by residential uses.

DUNLAP I do not disagree with your assumption on any of those points except possibly the traffic on 29th Street. I am pretty sure that we are planning that the 25th Street ditch crossing will land on 29th Street and go right past this area, not on a residential type of street.

GOLTRY The street is going to be improved to a higher standard to carry a higher volume of traffic. But if you look at the character of the residential developments that have been platted along it; thinking of Forest Ridge which is one of the major subdivisions located between Maize and Tyler, they even came in and requested that their property at the immediate northwest corner of 29th and Tyler be rezoned from commercial to residential use. And, we have a very small amount of commercial zoning at the other corners at the 29th and Tyler intersection. We know what has been built at the corner of Ridge and 29th, and if you look at the subdivisions along 29th between Ridge and Tyler, again they are residential in character and the housing comes up to the arterial road. They are

nicely screened and the houses are oriented with backs or sides to the arterial. We would expect the same type of pattern to occur from Maize to 119th with encouraging the residential developments to be in those mid-mile locations.

DUNLAP Where is the new super Target going to be?

GOLTRY It is located here (pointing to the area south of the subject tract), and there is an intervening property in between.

RUSS EWY, BAUGHMAN COMPANY I would like to point out that the deferral did lend itself to agreeing on a numerous set of conditions that were in the original staff report. One of the items we were not able to come to agreement with was the treatment of what the original Parcel 1 comprised of, and what the revised CUP shows as Parcel 1 and Parcel 2. The effort was made by the applicant to understand and agree with, to a certain degree, some of the points that staff was making over the last several weeks in regards to transitional zoning, such as having your commercial a certain depth off of Maize Road etc. What we tried to do that is to use some of the other zoning districts in the Zoning Code that have historically been used as a transition between residential and commercial. That would be the "NR" Neighborhood Retail along the frontage of 29th Street and even lesser zoning district "GO" General Office where it abuts the known single-family development. I use the word "known" from the standpoint that we do understand that this area is being developed with additional single-family homes, so there is a need to account for the residential uses next to the southwest corner of this CUP. A relatively large tract of ground is located here at this point (pointing to the area west of Parcel 2), and at this time we have no understanding of what that could become or would become or is planned for. This tract between what you had just said is going to be the super-Target and our property while zoned "SF-5" we know that due to the drainage of this entire intersection we are going to consume a lot of that tract with the word "Wichita" in it for drainage for large storm-water detention facilities so we wouldn't not expect any type of residential development to be along the south of us for the majority of our property. We truly are looking at the treatment of that west property line where there is the ability for the developer to come in and do more or additional single-family development, multi-family development, duplex-development it is really unknown to me at this point.

Our point in all of this is that we would still seek to treat Parcel 1 and Parcel 2 as more of a transitional area between the commercial uses further to the east and the unknown residential to the west. I would also like to point out that the examples that Donna gave are true. This isn't uncommon at other intersections such as 21st and Tyler, or 21st and Ridge Road, where you have Reflection Ridge that extends beyond this 1,000 foot barrier with a similar zoning pattern of Limited Commercial giving away to about a 500-foot strip of general office. I think on the spirit and intent, we are still trying to get as close as possible to this approach.

HENTZEN Looking at the revised site plan what do you want on Parcel 4?

EWY Parcel 3 and Parcel 4 will be your standard Limited Commercial uses within a CUP.

HENTZEN What do you want on Parcel 5 ?

EWY Parcel 5 will be a drainage area that will be platted as a reserve for drainage purposes; no development will occur on Parcel 5.

HENTZEN What is the zoning on Parcel 5 now?

EWY Parcel 5 is zoned "SF-20" Single-family residential.

HENTZEN Do we make any change to that?

EWY We are requesting Parcel 5 to be zoned "LC" Limited Commercial.

HENTZEN Parcel 1?

EWY Parcel 1 we are requesting "GO" General Office. Parcel 2 we are requesting "LC" Limited Commercial zoning restricted to the "NR" Neighborhood Retail district. Again, you can see on Parcel 4 and Parcel 5, the reason we are asking for screening to be predicated on uses and not zoning is that there is the ability or theory that one doesn't need to zone for drainage ponds. So we would be stuck basically building a screening wall between our pond and the developer to the south's pond, and we don't believe that is necessary.

BISHOP On Parcel 2, you are asking for "LC" Limited Commercial? Why go through that? What is the point, to make it easier to change via an amendment?

EWY One could think that, but I think any change that would go through an amendment process, that you all would make a decision one way or the other. If we had "NR" Neighborhood Retail as the base zoning district and we wanted to introduce "LC" Limited Commercial uses we would have to go through the zoning change. This way, we would go through a CUP amendment process to add an "LC" use. And, who knows in the future if there is a "LC" Limited Commercial use out there that is not allowed in the "NR" Neighborhood Retail district but by consensus it is agreeable we would not have to go through a zone change, that we would go through a CUP amendment, which would still be a public hearing.

BISHOP Isn't almost like deliberately creating a non-conforming situation?

EWY No, I don't believe so.

GAROFALO You are talking about for Parcel 2 "LC" Limited Commercial zoning limited to "NR" Neighborhood Retail uses? Why not go with "NR" Neighborhood Retail?

EWY Again, the CUP as an Overlay can restrict uses down. But as a base zoning district, again, if there were to be a use first allowed in the "LC" Limited Commercial zoning district that would be potentially acceptable here, and I can't give you a good

example right of the top of my head, but in theory, if there was a use out there that was solely allowed in the "LC" Limited Commercial District and not in the "NR" Neighborhood Retail district, in order to establish that use sometime in the future we would have to go through an CUP amendment and zone change. Whereas, if the underlying zoning is "LC" Limited Commercial, we would simply go through the same public hearing process but would still have to only get a CUP amendment.

WARREN In your CUP, under Parcel 2 you say Item I uses as permitted by "NR" Neighborhood Retail. Wouldn't we say limited to? That is kind of inclusive, and I would think this is going to be limited to those uses in "NR" Neighborhood Retail.

EWY Actually, you bring up a good point; it is a very subtle point, but it is one that there was some thought in the use of that particular language. In my estimation, I stated "all uses as permitted by" to state that the "NR" zoning district by itself has certain property development standards which defer then the property development standards of the "LC" zoning district. Specifically drive thru restaurant prohibition and the prohibition of restaurants being greater than 2,000 square feet and any one user being greater than 8,000 square feet. The language and the intent in ensuring that we are not doing the shell game on the zoning here is by saying—look, this will be developed as a "NR" as if it were a "NR" based zoning district. That is not a huge issue for us; if it is the will of the Commission to approve Parcel 2 as a "NR" based zoning district that is fine.

WARREN You are suggesting any change over "NR" in the way of increased usage, there would require due process and public hearings, effectively what you are saying is "I am going to limit myself to "NR".

JAMES E. DE BROECK, 10914 Ryan Street, Wichita, KS 67205 I live to the west and south of the proposed area. There is a lot of commercialization going on in the area. One of the things that I enjoyed about our area is the quietness of where it is right now. Obviously some of these other areas, there is nothing I can do about that because it has already been taken care of via the super-Target etc. I am just trying to voice my opinion that there is enough commercialization going on in the area, and the more that goes in, and the more traffic, and the quality of my life, pollution, etc., traffic in and out of my neighborhood, I would like to see that restricted as much as we can. I appreciate both the developer and the Commission as far as what they have done, especially to the parcel that is closest to me, wanting to keep that possibly single-family. Frankly I want to keep it all single-family if I can.

EWY On page 3 of the memo that you have from staff (although it says conditions 2, 3, and 4), the first three conditions are the ones that we are looking to alter. What is listed as Condition 2 be that Parcel 1 be "GO" General Office and Parcel 2 be "LC" Limited Commercial zoning restricted to the "NR" Neighborhood retail district. Again what is listed as Condition 3, retain the language of residential uses as opposed to residential zoning.

MOTION: To approve subject to staff comments and subject to granting the request of the applicants request for the modifications to Conditions 2, 3, and 4 and that he further modify that it be zoned to limit it to those uses in "NR" Neighborhood Retail.

WARREN moved, **SUNQUIST** seconded the motion, and it carried (12-0).

5. **Case No.: ZON2003-58** – Malibu Development Group/Baughman Company (Terry Smythe) Request Zone change from "SF-5" Single-family Residential to "TF-3" Twofamily Residential on property described as;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 & 16, Block B, Four H Addition, Wichita, Sedgwick County, Kansas.
General Location: Northwest of Tyler Road and Central

BACKGROUND: The application area is an undeveloped platted subdivision containing 16 lots that is located east of Waddington and ½ block south of Bekemeyer. The site is currently zoned "SF-5" Single-family Residential. The applicant is seeking "TF-3" zoning to allow for the development of duplex units on 4.2 acres. If the sixteen lots are developed with duplex units, the site could accommodate 32 units at a density of 7.6 units per acre. Access to the site is via residential streets serving single-family homes. The site is land locked between existing residential uses to the north and west and an office to the east and undeveloped commercial property to the south that prohibit this site from having direct access to Tyler Road or Central. The site is a passed over tract that was once part of the old Four H / County Extension campus.

The property located to the north is zoned "SF-5" and developed with single-family residences. Property to the east is zoned "GO" General Office and developed with a medical office. Land to the south is vacant, but is zoned for "LC" Limited Commercial uses while property to the west is zoned "SF-5" Single-family Residential and developed with single-family residences.

CASE HISTORY: The site is part of the Four H Addition platted in 1993. Most of the lots contain 8,720 square feet. The minimum lot size for duplex units is 6,000 square feet.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Single-family Residential; residences
SOUTH: "LC" Limited Commercial; vacant
EAST: "GO" General Office; medical office
WEST: "SF-5" Single-family Residential; residences

PUBLIC SERVICES: All municipal services are available. Existing roads are in place to accommodate projected traffic. Single-family residential uses generate an average of 10 automobile trips per day. Garden apartments and condominium / townhouse developments generate an average of six automobile trips per day per unit.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" map depicts this site as appropriate for "low density" residential. This category provides for low-density residential use in the range of one to six dwelling units per acre. Typical

residential types included in this category include: single-family detached, zero lot line units, cluster subdivisions and planned developments with a mix of housing types that may include townhouse and multi-family units. "TF-3" zoning is an appropriate zoning district to provide a buffer between residential and nonresidential uses / zoning even though duplex zoning is classified by the Comprehensive Plan as a "medium density residential" category.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area is a mix of zoning and uses ranging from "SF-5" Single-family Residential, "GO" General Office and "LC" Limited Commercial zoned lots developed with single-family residences and medical services, plus vacant retail sites. The application area is located adjacent to a stable fully developed residential neighborhood and a developing commercial node to the south.
2. The suitability of the subject property for the uses to which it has been restricted: The site could be developed as currently zoned. The site is zoned "SF-5" Single-family Residential which allows single family residential uses as well as some other compatible nonresidential uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally affect nearby property to any significant degree. The site could be developed with a mix of single-family and two-family structures or exclusively one type or the other. Either way, traffic is probably the most likely externality to affect existing development. If the site is developed with all duplex units, existing road improvements are capable of handling expected traffic volumes.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "Wichita Land Use Guide" map depicts this site as appropriate for "low density" residential. This category provides for low-density residential use in the range of one to six dwelling units per acre. Typical residential types included in this category include: single-family detached, zero lot line units, cluster subdivisions and planned developments with a mix of housing types that may include townhouse and multi-family units. "TF-3" zoning is an appropriate zoning district to provide a buffer between single-family residential and nonresidential uses / zoning, even though duplex zoning is classified by the Comprehensive Plan as a "medium density residential" category.
5. Impact of the proposed development on community facilities: Traffic on the existing residential streets will increase, however existing facilities are in place to accommodate increased traffic. Other community services are in place or are available.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **WELLS** seconded the motion, and it carried (12-0).

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- 6a. **Case No.: CUP2003-56 DP270 (Associated with ZON2003-55)** – Norma J. Hecox Revocable Trust (owner); Target Corporation c/o Jana Bean (contract purchaser); The Knoth Company, c/o Bill Knoth (agent); Ferris Consulting, c/o Greg Ferris (agent) Request Creation of The Ashley Park Towne Community Unit Plan on property described as;

and

- 6b. **Case No.: ZON2003-55 (Associated with CUP2003-56 DP270)** - Norma J. Hecox Revocable Trust (owner); Target Corporation c/o Jana Bean (contract purchaser); The Knoth Company, c/o Bill Knoth (agent); Ferris Consulting, c/o Greg Ferris (agent) Request Zone change from "SF-5" Single-family Residential, "B" Multi-family Residential and "GO" General Office to "LC" Limited Commercial on property described as;

Lots 1 through 8, Ridge Plaza 5th Addition, Wichita, Sedgwick County, Kansas

AND

A tract of land described as follows: Beginning 1,320 feet west of the northeast corner of the Northeast Quarter of Section 28, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; thence south a distance of 300 feet; thence west to the east line of Holland Lane; thence southeasterly along the east line of Holland Lane to the north line of University Avenue; thence northeasterly along the north line of University Avenue a distance of 541.42 feet to the west line of a drainage dedication a distance of 832.45 feet to the north line of said Northeast Quarter; thence west along the north line of said Northeast Quarter a distance of 113 feet to the point of beginning; except the north 30 feet thereof taken for road right-of-way

AND

A tract of land described as follows: Beginning 1,320 feet west of the northeast corner of the Northeast Quarter of Section 28, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; thence south a distance of 300 feet; thence west to the east right-of-way of Holland Lane; thence northwesterly along the east right-of-way line of Holland Lane to the north line of said Northeast Quarter; thence east along the north line of said Northeast Quarter to the point of beginning; except the north 30 feet thereof taken for road right-of-way. Generally located South of Maple, approximately 1/4 mile west of Ridge Road.

BACKGROUND: The applicant is requesting to create DP-270 Ashley Park Towne Centre Commercial Community Unit Plan, and to rezone the 18.6 acre tract to "LC" Limited Commercial. Currently it is zoned "SF-5" Single-family Residential, "B" Multi-family Residential, and "GO" General Office. The property is located between Maple and University Avenue approximately 1/4 mile west of

Ridge Road. The development would consist of four parcels for retail and commercial use. Parcel 1, the main parcel, would be 15+ acres. It abuts University Avenue and has a short amount of frontage onto Maple. The remaining frontage on Maple would consist of three one-acre parcels.

The C.U.P. would eliminate many of the "LC" Limited Commercial uses allowed in the "LC" district, including residential uses; daycare; pawnshops; second-hand stores; taverns; night clubs; drinking establishments; adult entertainment, tattooing and body piercing; correctional placement residences; group homes; recycling collection stations; asphalt or concrete, limited; manufacturing, limited; mining or quarrying; oil or gas drilling; rock crushing; solid waste incinerator; and all industrial uses. Restaurants would be permitted, provided that drive-up window service or in-vehicle service would not be permitted. Staff would recommend, as an additional restriction, that all uses permitted as a Conditional Use in the "LC" district require Conditional Use approval through a C.U.P. amendment prior to being permitted. Staff also would recommend that auto-serving uses be restricted on the three parcels along Maple.

Maximum building coverage and maximum gross floor area are proposed as 26 percent for Parcel 1, which is below the C.U.P. maximum building coverage limit of 30 percent and a lower level than typically requested. Maximum building coverage and maximum gross floor area are proposed for 30 percent for Parcels 2-4. Maximum building height is 35 feet, and building setbacks are 35 feet along the north, west, and south.

The C.U.P. includes provisions for landscaping per Landscape Ordinance of the City of Wichita, with the addition of defined buffer zones on the north (Maple), west (interior) and south (University) property lines. The C.U.P. requires pedestrian and vehicular connectivity. Lighting is limited to 25 feet in height for the northern portion of the property along Maple and 38 feet for the remainder of the tract. A screening wall is required along the property line bordering the elementary school. The C.U.P. calls for architectural compatibility among the buildings. Screening of trash receptacles and mechanical equipment is to be with materials similar to the main buildings.

Signage would be per standard City of Wichita signage, but it is more restrained in height and size along Maple. One monument sign, limited to 15 feet in height and 100 square feet in size, is allowed for Parcels 2-4 each. One center identification monument sign, limited to 20 feet in height and 150 feet in size, is allowed for Parcel 1. One ground sign on University would be limited 35 feet in height and 150 feet in size. Wall signs for a corporate logo extending slightly above the roofline are requested on the north, east and south elevations.

The surrounding area is distinctly different in each direction. The area to the north is a single-family development, zoned "SF-5", Ashley Park. A nonconforming retail business also is located on the north side of Maple. The area to the west is zoned "SF-5" but is occupied by Mary Benton Elementary School. The area to the south of University Avenue is zoned "LC" and "GC" General Commercial. It is developed with large business service types of uses, and several tracts remain vacant. This business district separates the subject tract from Kellogg, which is perhaps the most intensively developed commercial corridor in the urban area. A drainage ditch adjoins the property on the east; and Lowe's is located between the drainage ditch and Ridge Road. The Lowe's tract is zoned "LC" and "GC".

CASE HISTORY: The western portion of the property is platted as Ridge Plaza 5th Addition, recorded October 15, 1979. Holland Lane was dedicated by this plat. The eastern portion is unplatted.

The property is part of DP-37 Ridge Plaza Community Unit Plan. One of the effects of this case would be to remove the application area from DP-37 Ridge Plaza C.U.P. The site would have been permitted to develop approximately 90,000 square feet of retail/commercial type uses on the southeast portion, and up to 290,000+ square feet of office type uses. Alternatively, the office parcels could have been developed with up to 267 apartment units.

The site was previously approved, subject to platting, on July 29, 1999 for "LC" Limited Commercial zoning and DP-244 Ashley Towne Centre Commercial Community Unit Plan. The agent for the case did not complete the platting and allowed the case to be closed for failure to plat on June 3, 2002.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5";	Single-family residential, retail
SOUTH: "LC"; "GC"	Business services, vacant
EAST: "LC"; "GC"	Drainage easement, big box home improvement retail
WEST: "SF-5"	Mary Benton Elementary School

PUBLIC SERVICES: A "Traffic Study" (Wichita West Target Traffic Study, November 2003, Professional Engineering Consultants, P.A.) analyzed trip generation by the Ashley Park Towne Centre site, trip distribution on major and minor streets, existing and projected traffic, and traffic impacts and improvements needed. According to the Traffic Study, 50 percent of the traffic going to the site would be drive-by traffic, that is, traffic already on the facility. Addressing trip generation from the east and west, there would be an additional 172 and 205 trips east and west on Maple in the 5:00-6:00 p.m. weekday peak period. With the existing traffic hourly volume of 2,300 vehicles in the east/west direction on Maple at the Target site, this is an approximate nine percent increase in flow, which may not be discernable to motorists on Woodchuck. Improvements recommended for Maple based on this traffic study were traffic signalization on Maple at Ashley Park, lane configuration with a left-turn lane and right-turn accel/decel lane across the site. No improvements were recommended for the Maple and Ridge intersection or the University/Ridge intersection.

The Traffic Study recommended consideration of eliminating parking along University, which is a nonresidential street 41 feet in width. Without the parking, University is sufficiently wide to have three lanes, with one being used as a center left-turn lane. The proposed site plan eliminates the need for Holland Lane between Maple and University. This street right-of-way would need to be vacated as part of platting.

The safety of children walking to Mary Benton Elementary also has been considered. The Traffic Engineer recommended signage designating the pedestrian crosswalk, ensuring clear sight distances with no shrubbery/trees limiting the view of pedestrians, pedestrian signal phasing, and providing a center "refuge" in the entrance island.

Other normal public services are available.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "commercial", "office" and "high density residential" development.

Commercial Objective III.B encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

Residential Objective II.A.1 seeks to use community unit plans and other tools to promote mixed use development, higher density residential environment and appropriate buffering.

RECOMMENDATION: The proposed C.U.P. is in conformance with the "Wichita Land Use Guide" recommendation of commercial for the eastern two-thirds of the site. The property was approved by WCC for a similar commercial community unit plan in 1999. The "GO" and "B" tracts have been rezoned and available for use in these zoning districts for the western portion of the tract since 1979. The request would transition the recommended use on the Comprehensive Plan from office use to commercial use for an additional 200 feet westward on Maple, and replace the interior portion recommended for high density residential with commercial use.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED, subject to platting within one year and subject to the following conditions:

- E. APPROVE the zone change (ZON2003-00055) to "LC" Limited Commercial;
- F. APPROVE the Community Unit Plan (DP-270), subject to the following conditions:
 - 1. Upon completion of platting, request an administrative adjustment to DP-37 to remove the area comprising DP-270 from DP-37 Ridge Plaza C.U.P.
 - 2. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
 - 3. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
 - 4. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
 - 5. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-270) includes special conditions for development on this property.
 - 6. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The surrounding area is distinctly different in each direction. The area to the north is a single-family development, zoned "SF-5", Ashley Park. A nonconforming retail business also is located on the north side of Maple. The area to the west is zoned "SF-5" but is occupied by Mary Benton Elementary School. The area to the south of University Avenue is zoned "LC" and "GC" General Commercial. It is developed with large business service types of uses, and several tracts remain vacant. This business district separates the subject tract from Kellogg, which is perhaps the most intensively developed commercial corridor in the urban area. A drainage ditch adjoins the property on the east; and Lowe's is located between the drainage ditch and Ridge Road. The Lowe's tract is zoned "LC" and "GC".
- 2. The suitability of the subject property for the uses to which it has been restricted: The property has been zoned for multi-family residential and low-density residential use since 1979 but has not been developed, probably due to the type of commercial uses to the south and east. Additionally, the separation of residential development to the north of the site by Maple, diminishes the ties of the site with the nearest residential area.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Rezoning and commercial development will increase the proximity of nonresidential use to the Ashley Park residential area. These effects are reduced by limitations in uses, and the restrained signage, lighting heights, and landscape street yard buffer required along the Maple frontage. Traffic impacts are projected to be somewhat greater than already permitted by DP-37 Ridge Plaza C.U.P., depending on whether the parcels were developed with office and commercial/retail uses (very small increase) or apartments and commercial/retail uses (perhaps a 35 percent increase).
- 4. Length of time the subject property has remained vacant as zoned: The "GO" and "B" tracts have been rezoned and available for use in these zoning districts for the western portion of the tract since 1979.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed C.U.P. is in conformance with the "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* "Wichita Land Use Guide" for the eastern two-thirds of the site. The property was approved by WCC for a similar commercial community unit plan in 1999. The request would transition the recommended use on the Comprehensive Plan from office use to commercial use for an additional 200 feet westward on Maple, and replace the interior portion recommended for high density residential with commercial use.
6. Impact of the proposed development on community facilities: The Traffic Study identified the increased traffic anticipated by the development. The transportation improvements on Maple for (1) signalization at Ashley Park, (2) pedestrian oriented signage, phasing and design of site entrance, (3) center left-turn lanes, (4) right-turn accel/decel lanes, and (5) striping on University should accommodate the increased flow and provide for pedestrian safety.

MOTION: To limit public speaking to 3 minutes.

DUNLAP moved, **COULTER** seconded the motion, and it carried (11-0).

BISHOP Condition #1 on page 2 of the staff report, wall signs for a corporate logo extending slightly above the roofline are requested on the north, east and south elevations. What is slightly?

GOLTRY I will defer that to the experts. I have seen the elevations and it is modest.

GREG FERRIS, FERRIS CONSULTING, Agent. We concur with the conditions recommended by staff. Commissioner Bishop, to answer your question, the sign will extend three feet above, which will still keep us lower than the allowed height in the zoning district. In 1999, the WCC approved a CUP on this property, and that CUP allowed for 1 Parcel of 155,000 square feet, which a major "big box" could have located on, and a total of 234,000 square feet. It went to DAB, MAPC, and WCC and was approved. The new CUP in front of you, instead of being 234,000 square feet, is 174,000 square feet or a deduction of 60,000 square feet.

We are requesting that on Parcel 1, the development is allowed to be 135,000 square feet, which is 20,000 square feet less than was allowed in the CUP that was approved by the Planning Commission and the City Council. This proposal today is more restrictive than what was approved by in 1999.

We met with the school, and they were concerned about the fencing, and we will construct a masonry wall along the property line, but that leaves the southern property with nothing but trees, and they had concerns about children wondering around there. Target Company will be offering the amount of money needed to construct a fence to run from the property line or to the driveway to the parking lot. We will be meeting again with the school to make sure we are in concurrence, and make any changes before the City Council meeting we can do that.

We met with the President of the Homeowners Association today, and he has given us some information we will also be reviewing. We are trying to work out the issues with Target and the neighbors.

What is existing there is that the traffic would be about a wash. I think if you look at multi-family and office, they generate traffic during the peak hours; that is when there are problems on Maple, during the peak hours. There is a lot of traffic at the peak times. Target hours are 8 a.m., and their peak hours don't start until after the peak hours, and we will be generating the traffic during the off peak hours. We are going to improve the traffic flow.

JANA BEAN, Target Employee. Target feels strongly about community involvement. A store this size would employ about 150 employees as an average. There will be \$300,000 spent annually within your community. Target is involved with education, and when an applicant applies for a Target charge card they can choose a school of their choice and 1% of their purchases will be donated directly to that school that can be used for a pizza night, computers or improve landscaping at the school. Each store is given a certain amount of funds allocated to the store manager, and they use their discretion to approve programs to help improve social and community issues.

GAROFALO Can you be specific on the times of operations.

FERRIS Open 8 a.m. to 10 p.m., Monday-Saturday, and 9 a.m. to 10 p.m. on Sunday. This is not a Super Target.

MARNELL You said something about a change in conditions for square footage, where is that?

FERRIS That would be in Parcel 1 in the C.U.P. document; maximum building coverage should be 20% and 135,000 square feet, and that is 10% under what is allowed by Code.

MARNELL And that is where it currently says 26% and 180,000 square feet?

FERRIS Correct, this first line, not the second.

DUNLAP You mentioned traffic improvements. What will you be doing? By putting this store here, and closing the other one, how many additional trips are you going to generate on Maple?

BRENT REMSBERG, P.E.C., 303 S. Topeka, Wichita, KS. In the peak period is when we look at the traffic operation, and the facility is designed for handling traffic for that peak period. So, the numbers I am giving you are for that peak period. In the evening a peak period occurs between 5-6 pm. This store will generate a total of 600 trips, 250 to this site and 350 away. As a point of reference, the City took counts in March of 2002 at the intersection of Ridge and Maple, and they counted about 3,400 cars an hour entering that intersection. We took counts in October 2003, and counted nearly 1,000 more cars in that same period. People are

avoiding the construction off Kellogg, and turning north on Ridge and onto Maple. That movement increased from 400 an hour to 530-540 an hour. In perspective, Target will add fewer trips in the peak hour than the construction on Kellogg has in the last 19 months.

DUNLAP When Kellogg is finished there will be a lower flow of traffic?

REMSBERG In my opinion that is true, but our report designed the number of lanes, and the length of the lanes and the function of the traffic signal as though that wasn't going to happen.

DUNLAP How do we get the kids across the street to get the school?

REMSBERG Today there is a signalized crossing west of the Target property line. The street improvement proposed would start at about the west property line of Target, and it would widen an additional two lanes from that point all the way east until it tied into the improvements done when Lowe's was developed.

DUNLAP The main driveway is going to line up with something on the north side?

REMSBERG It is suppose to line with Ashley Park where there will be a signal installed. The proposal to do that is so that we don't have conflicting left turn movements if we had both Ashley Park and the entrance and the left turn into the entrance and the left turn for Ashley Park would be fighting for the same piece of real estate because of the drainage canal that I won't take responsibility for we can't move future east.

DUNLAP How much traffic will come from University? Considering there is a lot of retail east of Ridge that comes to that corner?

REMSBERG We anticipate about 30% of the traffic into the site will come from the south and predominately will use University for access.

WARREN There will be traffic signalization at Ashley and Maple?

REMSBERG Correct. The developer of the Target site will pay for that.

GAROFALO Planning on vacating Holland?

FERRIS That is correct.

GAROFALO How many accesses are you requesting on Maple?

FERRIS One major entry with the signal at Ashley, and a minor entry slightly to the west of that will mainly service the out parcels. We are limited to two points of conflict on Maple which is one less then would be allowed under the current CUP.

GAROFALO On University?

FERRIS We are limiting it to two as well.

GAROFALO The access on Maple, approximately where would it be?

FERRIS Right here (pointing to a map).

MARNELL When you did a traffic study on the proposed Target store here, did you do that in the abstract of just that there is going to be a Target store go here or did you do it just assuming that the other one would go away?

REMSBERG Normally when we do a traffic study it is only a zone case. We don't know specific uses. In this case, not only did we know the specific use, we knew the other one would go away. To add some tangibility to the study we actually counted the trip generation from the existing store, and prorated to the size of the new store. We actually got higher trip generation rates than we would have using average national statistical numbers.

BISHOP I need to ask you about the orientation of the different parcels. I am assuming for Parcels 2, 3, and 4 the orientation would be towards Maple?

FERRIS Correct.

BISHOP How about for the Target store?

FERRIS It will be oriented towards Maple as well. Frankly, you would want it that way. From a good planning standpoint, you wouldn't want truck traffic in back of the house to face your major arterial. You would want your back of house oriented toward the commercial development, and to your truck entry which will be off University because Target restricts their deliver trucks to the secondary entrances so that they are not allowed the Maple entrances.

GAROFALO Are you in agreement with the suggested signalizations?

FERRIS Yes. Condition #11 Target agreed to pay for any of the improvements that are required by this traffic study including turn signals, accel/decel lanes, and left turning lanes, as well as some improvements on University regarding striping and other things.

SCOTT LOGAN, TRAFFIC ENGINEERING. We looked at it, and in the preliminary stage made a lot of comments and corrected the study. What it shows is probably about a 9% increase on Maple. It will add about 200 to the peak hour. The new lanes are going to accommodate the traffic generated to that site.

DUNLAP Ridge Road, dual left turn lanes; how soon do you see that happening in the CIP?

LOGAN It is under design right now, and we need to get it done in about 2005.

DUNLAP It will not be finished by the time the store is opening?

LOGAN Probably not.

KAREN DURANLEAU, 218 S. Ashley Park, Wichita, KS 67209 I moved into the area about three years ago. I am north of this development, and I am concerned about the traffic. It is a limited sampling for the traffic study. They did this on October 18 and October 21 at a two-hour time. You need to study this intersection, especially during Christmas time and average that traffic. The traffic study was taken as a very limited study. It was also based on the traffic at the existing Target, so things may be different at Tracy and Taft. There will be three pad sites right on Maple. The main entrance is going to be right across the street from my street. I don't think Target has been forthcoming with this traffic study, and it was not available until Monday. I moved in this neighborhood in the year 2000, and there is a restrictive covenant in my neighborhood, and we agreed when we moved in there that these were things we wanted to see in our neighborhood. You have to have a certain number of trees, and a certain size of tree, shrubs, no garden more than 200 square feet. You have to have fencing requirements, and this tells me a Target discount store does not fit within this area.

DUNLAP I am wondering what did you think would go into that lot?

DURANLEAU So kind of apartment complex.

DUNLAP There will be a whole lot more traffic if it were apartments.

DAVID MCARTHUR, 132 Muirfield Ct., Wichita, KS 67209 I live in Glen Eagles. I live about three blocks from Benton Elementary. There is a lot of traffic. It is so bad I used to walk the kids to school, and it has become so dangerous we can't walk down the streets any more. It is not just because of traffic from Kellogg construction. This is very poor planning. I am very upset.

DEAN HINCKLEY, 401 S. Turquoise, Wichita, KS 67209 I have lived here since 1981, before the housing developments was put in there. Nobody has mentioned Central, and it is torn up to so that traffic is also coming down to Maple now. We used to have septic tanks and dirt roads. By working with the City and passing around the petitions we have a good drainage system out there; no more flooding, paved streets. I am a firm believer in progress. I believe Target is a good company, and I think they will be a good addition to our neighborhood.

BRIAN STUART, 229 S. Ashley Park, Wichita, KS 67209 I am the third house in from Maple. It was brought up about the Brownthrush entrance here. There is no back exit to there. There is a fire gate at the back, and should you decide to approve this, my opinion is that needs to be gated in some manner so that the residences can get in and out. They built there so they would not have traffic. I talked to Brent with PEC, and asked him at our meeting at Benton Elementary this week it was brought up about Christmas traffic. They don't take that into account. They figure Christmas traffic will be 140% of what this study shows. Take the safety of the children versus the profit of Target. The Target that exists now; they brought up the fact that they would employ 150 people in the new Target. How many people do they employee now? I was the president of the Homeowners Association in 1999 when we agreed and met with the developer. At that time, we discussed some office and something similar to Brittany Center going in there. Not a high volume discount retailer. We don't need a high volume retailer abutting a K-5 elementary school. We have no sidewalks in Ashley Park or in Glen Eagles. People go fast down Maple Street; 40-50 miles an hour.

JOSEPH HENG, 245 S. Gleneagles, Wichita, KS 67209 I have put together a slide show to demonstrate the zoning around the other 58 elementary schools in the City of Wichita. It was zoned "LC" Limited Commercial but how it was laid out was more like "NR" Neighborhood Retail.

COULTER With all the new current bond issues done at all the schools has the district proposed any changes that would involve traffic or safety issues at your school?

HENG Not that I know.

KERRY SWANSON, 144 S. Gleneagles, Wichita, KS 67209 My child goes to Benton Elementary School. I think it is wrong to put a large-scale commercial development next to an elementary school. Children that age do not know the dangers of a large development. How can a store like this be anything but detrimental? I am shocked the school district is not here saying this is a bad idea. We have had one child killed along Maple. They have offered to put a fence up but the kids will have to walk down Maple and cross the street.

MIKE PEARCE, 212 N. ASHLEY PARK, Wichita, KS 67209 At the southeast corner of Maple and Ridge Road there is development going on right now which we do not know what it is, but they have took out the old corner convenience store. They have taken out houses and they have opened that whole corner up. We don't know what is going in there on that corner so in their traffic studies none of that has been included in that. But to put something that dense in this neighborhood is a bad idea.

BYRON CHRISLER, 106 N. ASHLEY PARK, Wichita, KS 67209 – We live close to each other. I happen to be on the Board of Directors of the Ashley Park Homeowners Association, and I have since 1994. So it has been a long while. What we knew on the old CUP was it was going to be a bunch of pad sites with the largest building not being over 20,000 square feet, like some Old Navy stores and upscale restaurants. That is what we were expecting. In all the neighborhoods surrounding this development we are

about 98% opposing this development. We have collected petitions. As the project is now, we are opposed to this. We gave Target a list of things our neighborhoods want.

DUNLAP What can Traffic Engineering do to prevent the people from going through Ashley Park?

CHRISLER We have talked about this, and really no recommendation has come back. Maybe close off Ashley Park.

SCOTT LOGAN If this gets approved with this traffic signal it is not going to favor Ashley Park. It will favor Maple. If there is traffic or cut through traffic on Ashley Park, we will take a good look at that. To close Ashley Park is a mistake because that would divert flow to some other street. The 1,500 vehicles a day it has to go out.

BISHOP A previous speaker said something about sustainable communities. What would you like to see there? Are you familiar with the Far West Commercial Development Policy?

CHRISLER No, I don't know about that policy. I would like to see them turn the Target around, and run the traffic on the busier street where it can connect.

BISHOP The Far West Commercial Development Policy does exist, and it goes further in a direction in the sustainable communities.

CHRISLER I am a taxpayer and I am concerned with the safety of the school children, and what is happening in my area.

GREG VASSALLI, 105 N. Muirfield Ct., Wichita, KS 67209 All I have to add is the traffic around 4 p.m. to 5 p.m. from Tyler Road heading east is backed up almost to Ridge Road. Kellogg and Central is the same way. I moved in 8 months ago. My investment will depreciate. A nice restaurant or something like that going in there would be great. Too much traffic and the safety of the children will be bad as well.

CHRIS GABLER, 126 S. ASHLEY PARK, Wichita, KS 67209 I am also on the Board of Ashley Park Neighborhood Association, not much more I can say. If you do approve this plan, and we did present this idea to Target but it was shot down is to turn the store around and face the industrial park that they have already presented to you. I fear for Benton Elementary. I believe the traffic stopped by that light would cause the traffic to go around that school at an incredible rate that nobody has addressed, not even Mr. Traffic Engineer who should address these types of issues.

GARY PHELPS, 221 S. ASHLEY PARK, Wichita, KS 67209 We moved in here about three years ago. Jay Russell bought this property from my father-in-law's mother. Maple has been an arterial for years. The whole thing is that this was all residential around this area. We are concerned about the traffic and the safety of the children getting out of school. Target has said they are going to abandon the building that they have on Taft to be on an arterial. So taking a traffic study from the Taft store is not really true of what is going to be on Maple Street on a main arterial.

GREG FERRIS, I want to point out some misstatements. The CUP document that you have was prepared about two weeks ago, and it shows the 20-foot landscape buffer. There will not be any widening of Maple, at least from Target's standpoint or from any Target generated traffic the need for that where the crosswalk is. That crosswalk, we are considerably to the east of that crosswalk, and we will not impact that. Maple carries 25,000 cars a day. The reason Target wants to be on Maple is because they want to get that traffic that is already there into their place. We are not going to add significant numbers of cars on a major arterial.

Ashley Park Homeowners group suggested the old CUP was about nice little restaurants or small retail shops. The numbers I read to you are; what was approved was one parcel of 155,000 square feet which means a big box could go in there. A grocery store would put 2-4 times more traffic. We did not have a limited sampling. We counted cars for four days Friday, Saturday, Sunday, and Monday so we could get the highest volume days. The pads sites are included in the traffic study.

Kids are walking across that street now with crossing guards. We are not going to add a lot of cars coming from the west.

BARFIELD Will Target be adding more employees?

FERRIS Yes, we will be adding 20-30 new employees.

JOHNSON Have you met with the school board?

FERRIS We have met with the principal.

JOHNSON There are 400 students, do you know if they walk?

FERRIS The majority of those children walk or are driven, and it is low busing school.

JOHNSON Have they look at an overhead crossing there?

FERRIS I think the school would be interested in that.

GAROFALO The screening wall proposed would run right on the property line there?

FERRIS Yes, because we don't want to interfere with those evergreens and leaving space for those to grow and then we will run the wall and have our building setback from that. Then the fence on the south will adjoin the wall, and we will extend the north fence to attach that wall, and build a couple of gates so if teachers need access through they would be able to.

COULTER Would the school Principal be able to give statement?

ANN WELBORN, Principal, Benton Elementary, 338 S. Woodchuck, Wichita, KS 67209 With the new bond issue they are adding on an addition to the south side of our building, about five classrooms and a fine arts room with the understanding that we might have 450 students. This is my second year at Benton, and the safety issues have been ongoing. The issues that we see are children walking across Maple. I did ask for an overhead over Maple because the traffic goes by quickly. When we dismiss at 4:10. We have a tremendous amount of cars in our parking lots, across the streets and in the church across the street from the parking lot around the property waiting to pickup their kids. Usually they are cleared out of there within 10-12 minutes. Some of the things we are looking at are diverting that traffic, and maybe having pickup in the south parking lot. We are glad something is going in that field, and last fall we have soccer that is going on there. We have had to push to get those weeds mowed. We are trying to be proactive.

GAROFALO Could you address traffic going down Woodchuck. Are there school zone signs along there?

WILBURN Yes, there is a crosswalk sign on Woodchuck.

DUNLAP The fence on the south side, do you like that idea?

WILBURN Yes, we have a soccer field, and are worried about balls going over the fence and retrieving those. We talked about a masonry fence, and we would like it to be higher.

BARFIELD Scott Logan, with all the traffic concerns is this a 40 or 50 mile per hour speed zone; do you know?

LOGAN On all arterial 40 miles an hour is normal.

BARFIELD Do you give consideration to the amount of pedestrian traffic in an area when you set these speed limits?

LOGAN We have flashing school speed limit beacons that flash during those peak periods when the children cross.

BARFIELD I would like to see that speed limit lowered.

BISHOP There is not one single case that we have had today that has had the District Advisory Board prior to considering it on today's agenda. I think this needs more work, and would support a deferral of this case.

DUNLAP The DAB is not in place to advise us. The District Advisory Board is in place to advise City Council and they still do that no matter what action we take.

BISHOP It was pointed out to me, and it does not say in the resolution that created the District Advisory Board that the advice is to be provided to the Planning Commission. However, we were told at a retreat that we had that had several City Council members presents that is what they expected.

WARREN We need to thank all these people who have sat here all afternoon. We need to be sensitive to their concerns. The thing we don't have is unlimited discretionary and arbitrary authority over these cases. Here is one case that I hate talking about Target. We don't make zoning case decisions by a company. We make zoning case decisions by use. I don't know how this got to a Target issue with us. We have some facts before us, and we have staff approval. We have Traffic Engineering approval for this use. We have before us a previous consideration that was accepted and approved for a higher density type business then we have before us today. I don't see where we have the legal right of denial, and I back that up because we have had about four court cases that have went to District Court already. If we denied this, I have no doubt in my mind that it will go to District Court and be reversed.

MOTION: To approve subject to staff comments and recommendation. With the change to the 20% coverage and the 135,000 square feet and subject to all concessions being offered by the applicant.

WARREN moved, **MITCHELL** seconded the motion.

SUBSTITUTE MOTION: To defer until after District Advisory Board has met and reviewed this case.

BISHOP moved, died for lack of second.

Vote on the original motion carried (10-1). **BISHOP** opposed.

7. **Case No.: ZON2003-59** – Neville Family Trust c/o Rita Neville (owner)/applicant); Baughman Company, PA c/o Terry Smythe (agent) Request Zone change from "SF-5" Single-family Residential to "NR" Neighborhood Retail on property described as;

The East 273.25 feet of the West 1088.79 feet of the North 800 feet of the Northwest Quarter of Section 25, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas. Generally located approximately ¼ mile east of the Maple Street – 135th Street West intersection, on the south side of Maple Street.

BACKGROUND: The applicant requests a zone change from "SF-5" Single-family Residential to "NR" Neighborhood Retail on 4.6 acres of unplatted, undeveloped land located on the south side of Maple Street, approximately one-fourth mile east of the 135th Street West and Maple Street intersection. The subject site has frontage on Maple Street. The northern approximately one-third of this tract is currently being excavated to create a drainage detention pond. Storm water from both the subject site and the abutting DP-219 Auburn Hills Commercial Community Unit Plan area on the subject site's west side will go into this drainage detention pond on the subject site's Maple Street frontage.

The application area is located between an established single-family residential subdivision located to the east, and a developing commercial center, DP-219 Auburn Hills C.U.P., located to the west. Property to the north, across Maple, is zoned "SF-5" Single-family Residential and developed with single-family residences. Property to the northwest is zoned "LC" Limited Commercial and subject to development restrictions, Protective Overlay #17, that limits uses, building signage and access points. The property to the south is undeveloped and zoned "MF-29" Multi-family Residential, and is covered by Protective Overlay #38 that addresses architectural compatibility and density.

This site, along with the other corners of the Maple and 135th Street intersection are covered by the Far West Side Commercial Development Policy which limits this intersection to 24 acres of nonresidential development and indicates that signage should be low, small and monument style, and that there be architectural compatibility within developments and that commercial developments should be compatible with surrounding residential uses. The intersection currently has 28 acres of commercial zoning approved, and has development guidelines that comply with the west side development policy.

CASE HISTORY: The subject site is a 4.6 unplatted tract. The subject site was included in the request for Community Unit Plan DP-219 and the associated zoning case Z3191, a request for a zoning change of "AA" single-family residential to "LC" Light Commercial for 17.32-acres located on the southeast corner of Maple Street and 135th Street West. DP-219 and Z-3191 were approved by WCC on May 7, 1996, but without the subject site being part of the CUP or zoning change. The creation of the Far West Side Commercial Development Policy was triggered by the DP-219 and the Z-3191 application.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5"	Single family residential
	"LC"	not developed
SOUTH:	"MF-29"	not developed
EAST:	"SF-5"	Single family residential
WEST:	"LC"	not developed, developing into a Dillons

PUBLIC SERVICES: The site has frontage along Maple Street. Maple is improved with four lanes, a center turn lane and decel lanes at the intersection of Maple and 135th Street West. East of the intersection Maple is classified as a 4-lane arterial. Current average daily trips (ADT) are 3,096 ADTs east of the intersection, with projected traffic volumes for 2030 estimated to be 6,800 ADTs. However, it is predicted that if the northwest bypass were to be constructed, traffic volumes would more likely be in the 9,000 to 10,000 ADT range. No improvements are scheduled on the city or county capital improvements program for Maple. Water and sewer are available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The proposed "NR" Neighborhood Retail zoning would accommodate very low intensity retail and office development and other complementary land uses that serve and are generally appropriate near residential neighborhoods. The proposed "NR" zoning would serve as a transitional zoning district between the existing "LC" zoning to the west and the "SF-5" zoning and its existing single-family development to the east.

The Far West Side Commercial Development Policy, adopted by the City Council in 1996, indicates that the scale of commercial development at the intersection of Maple and 135th Street West should be limited to a total of 24 acres for all four corners and a maximum of 12 acres at any one corner. The Far West Side Commercial Development Policy also recommends that the appearance of commercial development should have certain characteristics in terms of signage, lighting, landscaping, shared internal access and architectural design.

RECOMMENDATION: The subject site was originally a part of the DP-219, Auburn Hills Commercial C.U.P. and Z-3191 application, which triggered the Far West Side Commercial Development Policy. The current application for "NR" zoning on the site fails to address some of the guideline concerns of the policy, especially in its relationship with the approved DP-219 abutting its west side. The approved drainage plan for DP-219 has integrated the subject site's northern one-third into it by using it for an off-site drainage detention pond to be shared with the subject site. With some more consideration, the possibility of more integration of the two sites would bring both sites closer to realizing the Far West Side Commercial Development Policy guidelines. Issues that need to be addressed include: (a) shared access onto Maple Street between DP-219 and the subject site, (b) consideration of the location, shape and size of the shared drainage detention pond on the subject site's Maple Street frontage and how this limits the subject site's location for access location, shared internal access between DP-219 and the subject site to allow vehicular movement between the two sites, and (d) coordination between the two sites screening and landscaping requirements. The recently approved landscaping plan for the Dillon's being constructed on Parcel 1 of DP-219 shows extensive landscaping between the two sites, with no access between the two. With the subject site's change in the zoning from "SF-5" to "NR" the need for the CUP's masonry wall would not be needed; thus other opportunities for shared internal access as well as integrating the design of the two sites. Planning Staff feels the zoning request for "NR" is appropriate for the site if issues of shared access onto Maple, shared internal access, and integrated design can be addressed within the guidelines of the Far West Side Commercial Development Policy and a Protective Overlay. Application of this policy would require dialogue with the owners of DP-219, which Staff has initiated, but has not been completed. Based upon the information available prior to the public hearings, planning staff recommends that the request be DEFERRED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property in the neighborhood is zoned either "GO" or "LC" on the four corners of the Maple Street – 135th Street West intersection; all have either a community unit plan overlay or protective overlay on the non-residential zoning. Beyond the intersection, the neighborhood is predominately zoned "SF-5", with the exception of some "MF-29" multi-family residential and some "TF-3" two-family residential zoned property. The character of the neighborhood is that of a developed and developing suburban residential neighborhood that has

displaced the prior agricultural uses of the area. These residential areas about the non-residential zoning at the intersection of Maple and 135th Street West, which is developed or developing with office, medical services and retail.

2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-5" Single-Family Residential and could be developed as zoned, although the location and size of the drainage detention pond and the resulting loss of buildable land on the site leaves a small isolated area for single-family residential development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental effects on residential properties in the area would be minimized by a Protective Overlay, which would address setbacks, screening, access, design, and should limit noise, lighting, and other activity from adversely impacting residential properties. The proposed "NR" zoning could serve as a transitional zoning between the existing undeveloped "LC" zoning west of the subject site and the existing "SF-6" zoning and its single-family residential development east of the subject site.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The proposed "NR" zoning would accommodate very low intensity retail and office development and other complementary land uses that serve and are generally appropriate near residential neighborhoods. There is a lack of application of the Far West Side Commercial Development Policy guidelines to the site. Considering that this site was originally part of the CUP that triggered the Far West Side Commercial Development Policy, it is appropriate to apply those guidelines to this site.
5. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated.

MOTION: Defer until December 11, 2003 meeting.

MARNELL moved, **COULTER** seconded the motion, and it carried (12-0).

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8. Case No.: ZON2003-56 – Cy Wiggins (owner/applicant); Savoy Company c/o Mark Savoy (agent) Request Zone change from "TF-3" Two-family Residential to "GO" General Office on property described as;

Lots 46 and 48, on Hillside, Mueller's Subdivision of Lots 1 and 4, in Block 4, in Richland's 2nd Addition, Wichita, Kansas, Sedgwick County, Kansas. Generally located on the northwest corner of Hillside and Waterman.

BACKGROUND: The applicant requests a zone change from "TF-3" Two Family to "GO" General Office on a 0.15-acre platted tract located on the northwest corner of Waterman and Hillside. The subject property is two platted lots and has been undeveloped since the residential structure on the property was razed in the early 1990s. The applicant intends to develop the subject property with an office building.

The surrounding area is characterized by primarily office uses along Hillside, with residential uses located on the interior properties beyond the Hillside frontage. The Hillside frontage between Douglas and Kellogg has been transitioning from residential to non-residential uses since the 1970s. The properties to the north and south are zoned "GO" General Office and are developed with office uses. The property to the east across Hillside is zoned "LC" Limited Commercial and is developed with a convenience store. The properties to the west across are zoned "TF-3" Two Family and are developed with duplexes and single-family residences.

CASE HISTORY: The subject property is platted as Lots 46 and 48 on Hillside, Mueller's Subdivision of Lots 1 and 4 in Block 4, Richland's 2nd Addition, which was recorded December 1, 1886.

ADJACENT ZONING AND LAND USE:

NORTH:	"GO"	Office
SOUTH:	"GO"	Office
EAST:	"LC"	Convenience store
WEST:	"TF-3"	Duplex, single family

PUBLIC SERVICES: The subject property has frontage along Hillside, a four-lane arterial street. Current traffic volumes on Central are approximately 22,000 vehicles per day. The 2030 Transportation Plan estimates that future traffic volumes on Hillside will not change significantly; however, based on current traffic volumes, the 2030 Transportation Plan recommends that Hillside be widened to five lanes. The 2002-2011 Capital Improvement Program contains a project to widen Hillside to five lanes in 2004. Planning staff recommends that the subject property be replatted in order to affect the policies of the Access Management Policy and to establish appropriate setbacks and utility easements. The applicant and staff have reached agreement on a number of modifications to established policies to facilitate redevelopment of the subject property. The agreed to modifications and the preliminary plat for the subject property are attached.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Office" development. The Office Locational Guidelines of the Comprehensive Plan recommend that office sites should be located adjacent to arterial streets and indicates that low-density office uses, such as the proposed use, can serve as a transitional land use between residential uses and higher intensity uses. The subject property conforms with the Land Use Guide and Locational Guidelines.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to replatting within one year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by primarily office uses along Hillside, with residential uses located on the interior properties beyond the Hillside frontage. Most of the properties along Hillside in this area are zoned "GO" General Office. The Hillside frontage between Douglas and Kellogg has been transitioning from residential to non-residential uses since the 1970s. The request is compatible with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "TF-3" Two Family, which accommodates medium-density residential development and complementary land uses. Given the subject property's location along an arterial street primarily developed with non-residential uses, the viability of residential development on the subject property is questionable. The property is more suited for office or institutional uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code and the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance should limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Office" development. The Office Locational Guidelines of the Comprehensive Plan recommend that office sites should be located adjacent to arterial streets and indicates that low-density office uses, such as the proposed use, can serve as a transitional land use between residential uses and higher intensity uses. The subject property conforms with the Land Use Guide and Locational Guidelines.
5. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated if the subject property is replatted to effect the policies of the Access Management Policy and to establish appropriate setbacks and utility easements.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **WELLS** seconded the motion, and it carried (12-0).

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9. **Case No.: ZON2003-57** – Aladdin Petroleum Corp. (Geo. Bruce); Baughman Company, P.A., (Terry Smythe) Request Zone change from "SF-5" Single-family Residential to "TF-3" Two-family Residential on property described as;

The North Half of the East Half of the Southeast Quarter of the Southwest Quarter of Section 1, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas. Generally located Northeast of the 21st Street North and Oliver intersection.

BACKGROUND: The applicant is seeking "TF-3" Twofamily Residential zoning on a 10.1 acre unplatted site that is currently zoned "SF-5" Single-family Residential. The tract is located approximately 600 feet north of 21st Street North and 600 feet east of Pinecrest. The site is undeveloped today. At this point, the only access to the site is via a residential street, Beacon Hill that provides access to the site from the north.

"TF-3" Twofamily Residential zoning is intended to accommodate moderate-density single-family and duplex residential development, as well as very limited density multi-family development and other complementary land uses. Minimum lot size for duplex units is 3,000 square feet per dwelling unit or 6,000 square feet per duplex unit.

Surrounding property is zoned and developed with a variety of uses: single-family residential, multi-family residential and commercial.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Single-family Residential; single-family residential
SOUTH: "MF-29" Multi-family Residential, "LC" Limited Commercial; multi-family residential
EAST: "SF-5" Single-family Residential, "MF-18" Multi-family Residential; single-family and multi-family residential
WEST: "MF-29" Multi-family Residential; vacant, multi-family residential

PUBLIC SERVICES: Public services are available.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" depicts the site as appropriate for "high-density residential". This category permits in excess of 10 dwelling units per acre. The "high-density residential" category also permits lower intensity developments. "TF-3" zoning would be an appropriate zoning to provide a buffer district between the multi-family and commercial zoning located south and west of the site, and the single-family residential zoning located to the north of the site. The single-point of access to the site is a platting issue that is somewhat problematic, as a more direct route via a collector street would provide better access than what exists for this site today. However, duplex zoning is classified as a "medium density residential" district and would be consistent with the Plan's land use recommendations.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding property is zoned and developed with a variety of uses: single-family residential, multi-family residential and commercial. The area surrounding the site is part of a long established area that contains a mix of uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-5" Single-family Residential which permits single family residential uses as well as some other compatible nonresidential uses. The site could be developed as zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally affect nearby property to any significant degree. If this request is approved, the site could be developed with a mix of single-family and duplex units, or exclusively with one type of residences or the other. Either way, traffic is probably the most likely externality to affect existing developments. It would be better if the site had direct access to Pinecrest; however there are any number of neighborhoods whose access is provided by a somewhat circuitous route similar to the situation that exists with this site.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The proposal is consistent with adopted plans in that "TF-3" zoning is an appropriate district to provide buffering between low-density residential uses and more intense districts. The plan also encourages infill development. Also, the plan indicates this site is appropriate for "high density" uses, and the request is for "medium density" residential.
5. Impact of the proposed development on community facilities: Traffic on existing residential street will increase, however existing facilities are in place to accommodate increased traffic. Other community services are available.

DALE MILLER Planning staff. I did have one phone call from someone that lives on that segment of Beacon Hill that was concerned about the traffic all coming through there, and in the staff report there are comments that it would be desirable if there was some other second point of access, either out to Pinecrest or down to 21st. The applicant may be able to speak to whether that is a possibility or not.

WARREN How did it happen to be landlocked? Is it adjacent to somebody that owns some property there? Is it truly landlocked?

MILLER Beacon Hill is the access point. It just doesn't have any frontage on any other street.

WARREN It does have egress/ingress option there from Beacon Hills?

MILLER Correct. The street that runs east and west probably acts as a collector based on the way the rest of the streets come back in there, but it is not designed to what we would call a collector street standard.

BISHOP Are there any sidewalks on Beacon Hill?

MILLER No.

TERRY SMYTHE, BAUGHMAN COMPANY We are asking for twin home zoning. That would allow single-family zoning as well as duplexes with the possibility of making this an elderly living place. Our only point of access is Beacon Hill to our north. The owner does not own the property to the west. I have spoken with some of the neighbors that live on Beacon Hill that would be most impacted by residences leaving this, and their concerns are about the traffic. Duplexes generally generate less traffic than single-family. We would look at some future access to the west.

WARREN Would a single access still gives us compliance with our Subdivision Regulations?

MILLER Typically the Fire Department usually tries to get a second point of access whenever possible, and probably what we would want to do is at least get a stub so that potentially it would be available whenever the property to the west develops.

SMYTHE I think there are some options if the property to the west is ever converted to this type of housing they might prefer to go out to the west, and stop the street at Beacon Hill. During platting we could look at a stub street or an emergency access point.

BISHOP Approximately how many units are going to be built in here?

SMYTHE I think 28 buildings, which is 56 dwelling units.

BISHOP You mentioned this maybe is a place for the elderly to live. Are talking about a particular program or assisted living type of program?

SMYTHE It could be.

BRIAN PARKINSON, 2410 Beacon Hill, Wichita, KS 67220 I have lived here since 1992. Putting a higher density zoning behind me is going to increase the traffic going by my house. I don't see any benefit for anybody in the neighborhood. This entire area is really single-family homes only. If they put elderly people back there, if that is the plan, there are no sidewalks back there, and then Beacon Hill will be a highly walked area as well. I am opposed to this zone change. To get to my house it is very hard because you have to wind to get around there to get to my house now, so if they allowed access to Pinecrest to the west it would be a huge

improvement for this particular tract of property. If you do approve the zoning, I would like to see a stub to the west that will allow future development an egress to the west, which would provide a lessening of traffic in my area.

JANET CAPPS, 2406 Beacon Hill, Wichita, KS 67220 I am opposed to this zone change, as well, because of the traffic and the access. If you do approve it, please put an outlet to the west.

BISHOP What is the direction of the nearest school?

CAPPS As far as I know they are bussed, but I see multiple busses in the neighborhood in the morning.

GARY WASHINGTON, 5413 Looman, Wichita, KS 67220 There is a lot of traffic in our area right now. My concern is what will this do to my property values? Will the increase in traffic, and also this is the last year I pay specials on the streets outside and they are already deteriorating.

MITCHELL Point out where the development will be from you home.

SMYTHE We understand the concerns the homeowners have. If you look at the intensity of the duplexes it will not be much of a change of what could happen out there today given the fact that we have the zoning to the south that is apartments, and to the west as well. There is a chance for a lot of apartments out there. We will be glad when we plat this property to have a stub street to the west.

HENTZEN The land to the west; what is that on the northwest corner?

SMYTHE That is a nursing home.

BARFIELD Has this been before the DAB?

MILLER No, because we are in the second half of the month so it will be going the first meeting in December.

MOTION: To approve, subject to staff comments and citing the findings in their report.

HENTZEN moved, **JOHNSON** seconded the motion, and it carried (10-1) **BISHOP** opposed.

BISHOP This is a real struggle because it is infill. I am distressed by the traffic situation. We could request or require a stub to the west. Unfortunately when the folks to the west come in they ask us to disregard that stub.

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10. **Case No.: CON2003-43** – Robert J. Dole Department of Veteran Affairs Medical & Regional Office Center c/o Stan Domann (owner); Brad Murray Rentals LLC c/o Brad Murray (applicant); AM Consulting Inc., c/o Kim Edgington (agent) Request Conditional Use for 180-foot high monopole wireless communication on property zoned "GO" General Office on property described as;

MOTION: Defer until December 11, 2003 meeting.

MARNELL moved, **COULTER** seconded the motion, and it carried (12-0).

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11. **Case No.: DR2003-26** - Request Unified Zoning Code Amendment to permit a "dental laboratory" as a home occupation, and add "warehousing" and "museum/gallery" to the list of uses contained in the off-street parking schedule and establish the minimum number of parking spaces required for these uses.

**WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT**

DATE: December 11, 2003

TO: Metropolitan Area Planning Commission

FROM: Dale Miller, Chief Planner, Current Plans

SUBJECT: DR2003-00026: Proposed amendments to Unified Zoning Code to permit a "dental laboratory" as a home occupation and to add "warehousing" and "museums" to the list of uses contained in the off-street parking schedule and establish the minimum number of parking spaces required for these uses

Proposed amendments to the Unified Zoning Code have been prepared and are scheduled for MAPC review at an advertised public hearing on November 20, 2003.

One proposed amendment would permit a "dental laboratory" as a permitted home occupation. The MAPC directed staff to prepare the proposed dental laboratory amendment after considering a citizen request for such a use to be permitted as a home occupation.

The second proposed amendment would establish parking requirements for "warehousing" and "museums." Parking requirements for warehousing previously were included in the Unified Zoning Code but were inadvertently removed during the last set of amendments. Parking requirements for museums are proposed to address past problems in interpreting the Unified Zoning Code to determine the appropriate parking requirement for this use.

Draft ordinances and resolutions to enact the proposed amendments are attached. One attached version is delineated with the proposed changes denoted by underlining or strike through. Planning staff recommends that the MAPC recommend approval by the governing bodies of the proposed amendments to the Unified Zoning Code.

MILLER Back early spring some folks came in and they do a dental lab where they make dentures. Apparently they were doing it at home and did not realize it wasn't an allowed home occupation. You directed staff to work up an amendment to make that possible, so that is part of what this does. It creates an amendment to the Zoning Code so that a "dental laboratory" can be done as a permitted home occupation subject to all the other home occupation criteria.

The other changes have to do with parking standards. Somehow, when we adopted the UZC; in the old Code there was a parking standard for "warehouse" use, and somehow that got left out, and we need to put that back in. The Superintendent of Central Inspection has been making interpretations all this time on what the parking is for warehousing. We had a similar situation with "museums" and "galleries." Now that we seem to have museums cropping up all over, museums are not a listed use in the parking standards and that is why we ask to add that.

BISHOP These are basically clean-up amendments and the one amendment on the dental laboratory is a result of a request from someone running a dental laboratory?

MILLER Correct.

BISHOP From time to time there have been other Subdivision Regulation changes that have been suggested, I was wondering is there going to be any attempt to look at the Subdivision Regulations?

MILLER These amendments are for the Unified Zoning Code.

BISHOP I am interested in the amendments to the UZC in the size and types and building that the UZC currently allows us to place in our backyard.

MILLER You mean accessory structures?

BISHOP Yes.

MILLER If so directed for staff to work on that, we would put that on the work agenda and work it in as best we can.

BISHOP I would like to do so.

MARNELL Elizabeth why don't you hold off on that until we get to the end of this meeting because we have an item to deal with those items.

GAROFALO This amendment, 1 parking space per 300 square feet and 1 parking space per 1,000 square feet for warehousing, are these standards?

MILLER We looked at other codes and tried to pick which ones would work best in Wichita.

GAROFALO The Treasure Museum, is that going to be enough space for them?

MILLER That one and Exploration Place, and the Presidents Museum or whatever is north of the Museum of Ancient Treasures, those all three ended up with different parking standards and that is why Kurt Schroeder was wanting us to get something for a standard back in the UZC.

DUNLAP Related to the warehouse parking, I think we might be able to drop something on people here that they are not prepared for. For example, look at a new warehouse that is 300,000 square feet at 45th Street North, just north of Broadway. United Warehouse, he has 12 employees and in a 300,000 square foot warehouse is going to require a whole bunch of parking.

MILLER This is the exact standard that was in the previous Code prior to 1996, and it is the same standard the Kurt Schroeder has been using all along.

DUNLAP I wouldn't disagree that it was there. I am just saying that I don't know that it is reasonable in all cases.

MILLER There are routes for administrative adjustments, to a point, and then they can go to BZA if we can't do it administratively.

TAPE CHANGE

MOTION: To approve the changes to the Unified Zoning Code as recommended by staff.

GAROFALO moved, **COULTER** seconded the motion, and it carried (11-0).

12. Adopt 2004 Unified Planning Work Program (UPWP), presented by Jamsheed Mehta.

**WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT**
Transportation Division

Date: November 20, 2004

TO: The Metropolitan Planning Organization (MPO)
FROM: Jamsheed Mehta, AICP
Chief Planner
SUBJECT: Unified Planning Work Program (UPWP) for 2004

The Unified Planning Work Program (UPWP) is the MPO's document identifying projects, programs and initiatives for the fiscal year. The document is required by federal law, and is the basis for receiving and expending federal transportation planning funds.

Transportation Planning funds from the US DOT provide for the salary of eight (full-time equivalent) staff positions, and all other expenses of the Transportation Division, including transportation studies, contractuels, commodities and capital outlays.

The proposed UPWP document includes projects and programs from January to December 2004. Several projects are repeated each year, such as compilation of the Transportation Improvement Program, monitoring and reporting of transportation data, and providing the coordination between different levels and units of government. However, some of the major projects include:

- Coordinating the South Area Transportation Study
- Updating the 2030 Transportation Plan
- Revising the MPO's planning boundary and representative membership
- Developing a project ranking methodology
- Updating and documenting the Congestion Management System
- Preparing and implementing the Public Involvement Process
- Coordinating Intelligent Transportation System projects
- Assisting in preparing a Transit Development Program
- Preparing a railroad operations consolidation and grade separation plan

The draft UPWP was reviewed by the MPO, State, Federal and local transportation agencies, and made available for public comment. The Technical Advisory Committee (TAC) reviews the draft UPWP on November 17, 2003, followed by the MPO's public meeting on November 20, 2003 to adopting the final document. The Wichita and Sedgwick County governing bodies must also approve the UPWP in order to authorize local matching funds.

Recommendation: a) Receive comments on, and make changes to, the proposed document;
b) Approve the 2004 UPWP and authorize the Chairman to sign the Joint Resolution and the Record of MPO Action

Attachments: Proposed UPWP 2004
Joint Resolution
Record of MPO Action

JAMSHEED MEHTA Planning staff.

MARNELL I think we were well brief in you past presentation and for those of you who didn't attend the workshop I want to commend Jamsheed on doing that and I am glad I was there. If we can proceed on, I would appreciate it.

MEHTA Alright, I will identify since this is a public meeting just for the record to see if anyone is here to speak on this item.

MARNELL Is there anyone to speak on this Item? Seeing none what is the pleasure of the Board?

HENTZEN Just above the recommendation it says followed by the MPO public meeting on November 20th?

MARNELL We are meeting as the MPO on this Item.

MOTION: To receive comments which were none and to approve the 2004 UPWP and authorize the Chairman to sign the Joint Resolution and the Record of MPO action.

GAROFALO moved, **COULTER** seconded the motion, and it carried (11-0).

13. Review 2004-2008 Transportation Improvement Program (TIP), presented by Jamsheed Mehta.

WICHITA-SEDGWICK COUNTY

METROPOLITAN AREA PLANNING DEPARTMENT
Transportation Division

Date: November 20, 2003

TO: The Metropolitan Planning Organization (MPO)

FROM: Jamsheed Mehta, AICP
Chief Planner

SUBJECT: Review the Transportation Improvement Program, TIP 2004-2008.

Planning staff will present an overview of the Transportation Improvement Program (TIP) on November 20, 2003. This will also be an opportunity for the MPO to ask questions and seek any clarifications before adopting the TIP document on December 11, 2003.

The TIP is a listing of all regionally significant transportation projects- including federally funded projects- within the Wichita metropolitan planning area. The Wichita-Sedgwick County Metropolitan Area Planning Commission is the designated Metropolitan Planning Organization (MPO) for the area and has the responsibility for programming all federally funded projects within the area.

This proposed TIP covers years 2004 through 2008 and costs approximately \$755 million. The document generally includes transportation projects (streets, bridges, highways, trails, airport and transit) from the Capital Improvement Programs (CIPs) of Sedgwick County, the City of Wichita, and small cities, and highway and paratransit projects sponsored and chosen by KDOT.

The City of Wichita is currently working on the draft CIP 2004-2013, and expects to adopt the document prior to the MPO's approval of the TIP. Therefore, City of Wichita's complete list of streets/bridges, transit and airport projects over the first five years are not included in the attachment at this time but will be part of the final approved TIP on Dec. 11, 2003 subject to council action. However, those Wichita projects (proposed) using federal funds attributed to the MPO are included in Attachment 1 for your review.

Three categories of federal funds are available to the MPO for programming. All cities within the metropolitan planning area are eligible to apply for these funds, and the annual average obligation authorities for these funds are:

Surface Transportation Program (STP)	\$ 6.1 million per year
Congestion Mitigation & Air Quality (CMAQ)	\$ 2.5 million
Bridge Program	\$ 1.7 million

For this TIP update, MAPD staff solicited project requests from all local governing bodies and KDOT, and hosted a workshop on the TIP process for them on October 16, 2003. 64 eligible projects have been submitted for your consideration, including seven projects from small cities.

The Technical Advisory Committee will review the TIP on November 17, 2003, and make recommendations to the MPO. The Public Hearing on the proposed TIP will be held by the MPO on December 11, 2003.

Recommendation: Provide comments regarding the federally funded projects, and set a public hearing date to adopt the 2004-2008 TIP on December 11, 2003.

Attachments:

1. List of federally funded projects within the Metropolitan Planning Area
2. Draft T.I.P. 2004 - 2008 (except Wichita projects)

JAMSHEED MEHTA Planning staff.

BISHOP The Murdock Bridge over Little Arkansas River is that a rehabilitation?

MEHTA There is an existing bridge that connects to the park and this will be a rebuilding of that.

BISHOP Just to strengthen it or totally replace it?

MEHTA It is a rehabilitation to the bridge.

GREG SHARP, Public Works Engineering , the existing structure will be strengthened

GAROFALO On the Pawnee corridor, it says Washington to Hydraulic, I thought originally we were talking about Broadway to Hydraulic is that scaled back some?

MEHTA That other section might come up in a later year but it is not in our five-year program and it is also possible that it is not a federally funded project. I am only showing you federally funded projects in the program. Maybe Greg Sharp can look at the C.I.P. to see if it is funded by some other funding source.

GAROFALO I would imagine Broadway all the way. There is one in 2006 here from Palisade to Water.

GREG SHARP, Public Works Engineering, I think the railroad corridor has something to do with that but I can't remember.

DUNLAP I get clear down to 2008 before I see anything on Greenwich Road and since it is not in the corporate City limits of Wichita at this point from K-96 North to Highway 254 is it in that Metropolitan area where we can spend federal funds outside the City limits?

MEHTA Yes, these federal funds go all the way, you can take it through to the other end of the county.

DUNLAP Since I happen to know you are pretty current on Highway 254 situation why are we not seeing it here or is this in the wrong place to be looking for it?

MEHTA They aren't proposing for federal funds but there are Greenwich projects in the proposed CIP.

SHARP Greenwich Central to 17th is in the 2009 construction projects just outside of you five-year program.

BARFIELD You said on 2003 all these projects were under construction, in particularly the Broadway Bridge and the BNSF overpass are these underway?

MEHTA The project has been let so there might be certain things they have to do prior to you seeing construction barrels out there.

DUNLAP Greg, you said Central to 17th?

SHARP Right, and 13th to K96 is also 2009.

DUNLAP How about K96 to Highway 254?

MEHTA Maybe this study that is getting underway...

DUNLAP We are putting a store out there that is going to employ 500 people.

MEHTA And that study will go all the way to Highway 254.

DUNLAP West Street to Maple can I assume that is storm water drainage to?

MEHTA The cost would not necessarily cover all those major storm water solutions but there will be work done at the same time to address that.

DUNLAP I wouldn't want to widen the street just to hold more water.

DUNLAP Is there a requirement to put the County afterward or can we put the County ahead and have there approval before we do?

MEHTA There wouldn't be any rush for the County but there maybe a rush for some of the smaller cities who would want to start programming funds for the engineering and even for letting the projects in some projects but if you could do it in December it will facilitate those.

GAROFALO Even though we approve this these things they can be dropped and moved around and so forth?

MEHTA Last year as an example, we came to you three times adding and subtracting projects by amending the TIP. The City of Wichita may want to present their 10 year CIP.

SCHLEGEL They will want to make a presentation to MAPC on December 11th.

HENTZEN Recommend to them not keep us until 6 or 7 p.m.

MITCHELL It troubles me a little bit that we are supposed to look at all CIP projects and see if they are somewhat compatible with the Comprehensive Plan and obviously we are not going to have any chance at all to do that. At what point does that slip? Do we ever get an opportunity to have input to the CIP between now and December 11th?

SCHLEGEL That is what the presentation will be on December 11th.

MITCHELL After they have made up their mind.

SCHLEGEL Well, they have to put something together. Both the County and the City go through a very long involved process in trying to draft a CIP. County has been here and presented their CIP to you and the City will do the same thing. If you want more input you can make that request to the City when they present that CIP to you and we can work something out.

MITCHELL I would feel a lot more comfortable with it rather than trying to go through that whole thing and approve it the first day we see it.

SCHLEGEL How would you like to proceed then? They are not going to be ready until December 11th.

MITCHELL That is the problem. They are just now starting and are suppose to be finished by December 11th.

SCHLEGEL No, they are not just starting their CIP they have been working on it a number of months now. They are to the point where they will want to get it to City Council for approval.

BISHOP In the past, staff has done an overview of the CIP relative to the Comprehensive Plan and sort of called out some items that might need to be looked at closer.

MITCHELL I am looking for a longer time frame to look at what the City is going to propose and expect us to approve on December 11th.

SCHLEGEL Would you like a draft in advance to look at?

MITCHELL Anything that you can give us lead time to look at those projects.

MILLER John I think what Mitch is expressing is that every time this CIP comes up the MAPC is the last one to get it yet they are to review for conformance but they never get enough time.

SCHLEGEL We don't control the CIP process for the City all we can do and it would be a good thing for you to ask is that they give you more time to review it. I can put in a request to get draft copies of the CIP and get them distributed to you in advance so at least you can look at them prior to the meeting. But you have to understand they have been going through a very lengthy process struggling to try and put something together.

MARNELL If I recall from prior years this Commission has made the request that we not get in this position every year and that the City could resolve this by keeping the same process in place by starting the thing a month early and it gets ignored every year.

SCHLEGEL How about the County CIP process?

MARNELL No, theirs was here months ago.

MITCHELL Right, but it didn't have to be approved a week later.

MOTION: To set a public hearing for December 11th to hear the TIP for 2004-2008.

GAROFALO moved, **MITCHELL** seconded the motion, and it carried (11-0).

14. Planning Summit, presented by John Schlegel.

Planning Summit deferred to another meeting.

15. Other matters/adjournment.

SCHLEGEL Is there any interest from the MAPC to have a staff and MAPC workshop? I have been getting requests from individual Commissioners to do something along these lines, and Mr. Warren has offered to use his place. Proposed dates.

MARNELL Probably should set it as 10-4 p.m. so we will be out of there.

SCHLEGEL Okay, December 19th from 10 a.m. to 4 pm. With a format determined prior to that and we will put together an agenda.

MARNELL With a draft Agenda to be sent out on December 11th.

SCHLEGEL Preliminary Agenda Items

1. Discuss with attorneys takings and annexations
2. Brief you on the draft County Subdivision Policy that is now under development
3. Subdivision Regulation matters
4. Zoning Ordinance Amendments
5. What kind of Comprehensive Plan do we want to have?
6. What MAPC priorities do you have as a Commission for the Planning Department?
7. CUP and how ill defined it is and I would like to discuss that
8. Discuss the Far West Policy

BARFIELD I am concerned about something that has happened that when we are asked to make decision and information is withheld it undermines our integrity. I am particularly concerned and distributed when a City Council member says that he really doesn't want to have all the information because he is concerned that he might lighten up on the rules because the City is involved.

The Metropolitan Area Planning Department informally adjourned at 6:25 p.m.

State of Kansas)
Sedgwick County) ss

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2003.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)